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ABSTRACT

This report of the Senate Committee on Labor and Human Resources favorably recommends the passage of amendments to the Individuals with Disabilities Education Act to reauthorize and improve the act. Specific recommended improvements include: (1) decreasing paperwork, (2) providing increased flexibility and lower costs in the delivery of services, (3) enhancing parental input in decision making, (4) making schools safer, and (5) consolidating and targeting discretionary programs. Individual sections of the report present the proposed legislation's purpose and summary, the background and need for this legislation, the history of the legislation and committee action, an explanation of the bill and committee views, the specific amendments to sections of the original act, and a section-by-section analysis. (DB)

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ED 419 315

INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997

MAY 9, 1997.—Ordered to be printed

Mr. JEFFORDS, from the Committee on Labor and Human Resources, submitted the following

REPORT

[To accompany S. 717]

The Committee on Labor and Human Resources, to which was referred the bill (S. 717) to amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

CONTENTS

		Page
I.	Introduction	1
II.	Purpose and summary	2
III.	Background and need for legislation	2
IV.	Legislative history and committee action	4
V.	Explanation of bill and committee views	4
VI.	Cost estimate	40
VII.	Regulatory impact statement	45
VIII.	Application of law to the legislative branch	45
IX	Section-by-section analysis	46
X.	Changes in existing law	61

I. INTRODUCTION

S. 717 was the result of extensive discussions among Senators and Congressmen, and officials of the U.S. Department of Education, as well as recommendations from parents of children with disabilities, educators, and other individuals interested in improving the quality of education for children with disabilities. S. 717 and its companion bill in the House, H.R. 5, as amended, are identical. The legislation was developed through a bicameral, biparti-

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san, legislative branch, executive branch collaborative effort that preceded committee action.

II. PURPOSE AND SUMMARY

In reporting S. 717, the Individuals with Disabilities Education Act Amendments of 1997, the committee improves the Individuals with Disabilities Education Act (IDEA) through provisions that: (1) place the emphasis on what is best educationally for children with disabilities rather than on paperwork for paperwork's sake; (2) give professionals, especially teachers, more influence and flexibility and school administrators and policymakers lower costs in the delivery of education to children with disabilities; (3) enhance the input of parents of children with disabilities in the decision making that affects their child's education; (4) make schools safer; and (5) consolidate and target discretionary programs to strengthen the capacity of America's schools to effectively serve children, including infants and toddlers, with disabilities.

The committee also makes it easier to understand and use IDEA by simplifying its structure and the organization of provisions. The legislation, in part A alphabetizes definition in section 602; in part B, consolidates all State educational agency eligibility requirements in section 612 and all local educational agency eligibility requirements in section 613; groups evaluation and reevaluation, individualized education program, and placement provisions in section 614; and places all procedural safeguards requirements in section 615. Part H, the early intervention program for infants and toddlers, becomes part C. Other discretionary programs are condensed and consolidated into part D, with two authorized subparts including a State Program Improvement Grant Program.

III. BACKGROUND AND NEED FOR LEGISLATION

Congress established a State grant program for the Education of Handicapped Children under title VI of the Elementary and Secondary Education Amendments of 1996 (P.L. 89–750). In 1970, Congress authorized the Education of the Handicapped Act (EHA) as title VI of P.L. 91–230. With the enactment of P.L. 91–230, the State grant program established in 1966 was redesignated as part B of the EHA

In 1975, Congress passed the Education for All Handicapped Children Act, P.L. 94–142. It amended part B, the State grant program in the EHA. P.L. 94–142 refined and expanded requirements for State participation in the State grant program. In accepting State grant funds, a State was required to provide a free appropriate public education (FAPE) to all children with disabilities in the State according to specific procedures and civil rights protections. From 1979 through 1994, a series of amendments to the EHA refined and increased in number discretionary programs in personnel preparation, research, demonstration, and technical assistance. In 1986, the Handicapped Children's Protection Act, P.L. 99–372, was enacted. In amending part B of the EHA, P.L. 99–372 authorized attorneys' fees for parents who prevail in due process proceedings and judicial actions against school districts. Also in 1986, P.L. 99–457 was enacted, creating a new part H in the EHA. Part H provides funds for State programs in early intervention

services for infants and toddlers with disabilities from birth through two years of age. The EHA amendments of 1990, P.L. 101–476, renamed the statute as the Individuals with Disabilities Education Act (IDEA). In 1994 P.L. 103–382, the Improving America's Schools Act of 1994, eliminated the separate authorization for the chapter 1 Handicapped Program and merged its authorization for funding with part B funding under the IDEA and gave school districts the discretion to remove children with disabilities to an interim alternative educational setting for up to 45 days when such children bring firearms to school.

This committee believes that the critical issue now is to place greater emphasis on improving student performance and ensuring that children with disabilities receive a quality public education. Educational achievement for children with disabilities, while improving, is still less than satisfactory.

This review and authorization of the IDEA is needed to move to the next step of providing special education and related services to children with disabilities: to improve and increase their educational achievement.

In the 104th Congress, Senator Frist, Chairman of the Subcommittee on Disability Policy, with Senator Harkin, introduced the Individuals with Disabilities Education Act Amendments of 1996, S. 1578. The legislation was reported out of the Committee on Labor and Human Resources on March 21, 1996. No further action was taken in the Senate.

In 105th Congress on January 28, 1997, Chairman Jeffords introduced the Frist-Harkin bill as S. 216.

On January 29, 1997 the Committee on Labor and Human Resources held a hearing (S. Hrg. 105–1) to solicit recommendations for the reauthorization of the Individuals with Disabilities Act (IDEA). The following individuals testified:

Judith E. Heumann, Assistant Secretary, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Washington, DC; Madeline Will, Former Assistant Secretary, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Chevy Chase, MD; Daniel Sullivan, Chairman, Bedford, New Hampshire School Board, Nashua, N.H.; David S. Wolk, Superintendent, Rutland City School District, Rutland, VT, on the behalf of the American Association of School Administrators; Michael Remus, Team Leader for Student Support Services, Kansas Board of Education, Chairman of the Board, the HRC, and member, National Association of State Directors of Special Education, Topeka, KS; Elisabeth T. Healy, Member, Pittsburgh School Board, and board member, TASH, Pittsburgh, PA; Anne L. Bryant, Executive Director, National School Boards Association, Alexandria, VA; Stanley S. Herr, Professor of Law, University of Maryland, Baltimore, MD; Marcia Reback, President, Rhode Island Federation of Teachers, Providence, RI; H. Michael Brown, Principal, Hope High School, on behalf of the National Association of Secondary School Principals, Hope, AR: Robert Chase, President, National Education Association, Washington, DC; and Gerald Hime, President, Council for Exceptional Children, Reston, VA.

IV. LEGISLATIVE HISTORY AND COMMITTEE ACTION

The committee considered the legislation on May 7, 1997. Chairman Jeffords offered four amendments en bloc. The first amendment makes clear that States are not obligated by Federal law to provide IDEA services to individuals aged 18 to 21 who are incarcerated in an adult prison and who were not receiving services immediately prior to their incarceration. If they were receiving services, the obligation to provide services, would continue. The second amendment clarifies that the only two exceptions to the so-called "stay put" rule in section 615(k) are when guns or drugs are involved, or when continued placement is substantially likely to result in physical harm. For all other violations of school rules or codes of conduct the stay put rule applies. Thus, if a child's parents object to a change in placement, the child would stay in his or her current placement. The third amendment defines substantial evidence for the purposes of the subsection of the bill dealing with placement in an alternative educational setting. A hearing officer's determination that continued placement is substantially likely to result in harm would require something more than a preponderance of the evidence. The fourth amendment clarifies what the law is today with respect to referral for enforcement, which may include referral to the Department of Justice.

Senator Gregg offered, and then withdrew, an amendment to specify minimum levels of appropriations to be provided in each of the fiscal years 1998 through 2004. Under the amendment, appropriations would be authorized at not less than $4,107,522,000 for fiscal year—an increase of $1 billion over the current funding level. Not less than $13,107,522,000 would be authorized in fiscal year 2004—an increase of $10 billion over the current level.

Final Action: The bill as amended was reported favorably by unanimous voice vote.

V. EXPLANATION OF BILL AND COMMITTEE VIEWS

The purposes of the Individuals with Disabilities Education Act Amendments of 1997 are to clarify and strengthen the Individuals with Disabilities Education Act (IDEA) by providing parents and educators with the tools to:

Preserve the right of children with disabilities to a free appropriate public education;

Promote improved educational results for children with disabilities through early intervention, preschool, and educational experiences that prepare them for later educational challenges and employment;

Expand and promote opportunities for parents, special education, related services, regular education and early intervention service providers, and other personnel to work in new partnerships at both the State and local levels;

Create incentives to enhance the capacity of schools and other community-based entities to work effectively with children with disabilities and their families, through targeted funding for personnel training, research, media, technology, and the dissemination of technical assistance and best practices.

In its 22-year life span, the Individuals with Disabilities Education Act has achieved many of the important goals it sought to achieve. Children with disabilities are for the most part well served in America's public and private schools and are guaranteed the right in every State and outlying area to a free appropriate public education by law.

The IDEA has been a very successful law. Prior to its implementation, approximately 1 million children with disabilities were denied education. The number of children with developmental disabilities in State institutions has declined by close to 90 percent. The number of young adults with disabilities enrolled in postsecondary education has tripled, and the unemployment rate for individuals with disabilities in their twenties is almost half that of their older counterparts.

Despite this progress, the promise of the law has not been fulfilled for too many children with disabilities. Too many students with disabilities are failing courses and dropping out of school. Almost twice as many students with disabilities drop out as compared to students without disabilities. Of further concern is the continued inappropriate placement of children from minority backgrounds and children with limited English proficiency in special education. In addition, school officials and others complain that the current law is unclear and focuses too much on paperwork and process rather than on improving results for children.

This authorization is viewed by the committee as an opportunity to review, strengthen, and improve IDEA to better educate children with disabilities and enable them to achieve a quality education by:

(1) Strengthening the role of parents;

(2) Ensuring access to the general education curriculum and reforms;

(3) Focusing on teaching and learning while reducing unnecessary paperwork requirements;

(4) Assisting educational agencies in addressing the costs of improving special education and related services to children with disabilities;

(5) Giving increased attention to racial, ethnic, and linguistic diversity to prevent inappropriate identification and mislabeling;

(6) Ensuring schools are safe and conducive to learning; and

(7) Encouraging parents and educators to work out their differences by using nonadversarial means.

In drafting the bill, the committee was guided by the premise that, to achieve a quality education for children with disabilities, it should start with current law and build on the actions, experiences, information, facts, and research gathered over the life of the law, particularly in the last 3 years. Further, in developing these amendments the committee distinguished between problems of implementation and problems with the law, and responded appropriately in addressing any issue raised.

Through this legislation the committee intends to encourage exemplary practices that lead to improved teaching and learning experiences for children with disabilities, and that in turn, for these children, result in productive independent adult lives, including employment. Through these efforts, the committee intends to assist

States in the implementation of early intervention services for infants and toddlers with disabilities and their families, and support the smooth and effective transition of these children to preschool.

The committee views the structure and substance of this legislation as critically important, if the country is to see clearer understanding of, and better implementation and fuller compliance with, the requirements of IDEA.

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Amendments to part A of the Individuals with Disabilities Education Act

Definitions

Section 602 of the Amendments consolidates the majority of the definitions in the act and reorders them alphabetically. Most definition in current law are retained, and where appropriate updated. For example the definitions of "State educational agency" and "Local educational agency" were amended to be consistent with the definition of these terms in title XIV of the Elementary and Secondary Education Act of 1965, as amended by the 1994 Improving America's Schools Act and the term "intermediate educational unit" has been replaced by the term "educational service agency" and its definition, to reflect the more contemporary understanding of the broad and varied functions of such agencies.

The bill amends the definition of "related services," by adding "orientation and mobility services." This change is not intended to reduce or alter the scope of related services or special education services that are available to children with disabilities, but merely to emphasize the importance of orientation and mobility services. Orientation and mobility services are generally recognized to be services provided to children who are blind or have visual impairments. However, it is important to keep in mind that children with other disabilities may also need instruction in traveling around their school, or to and from school. A high school aged child with a mental disability, for example, might need to be taught how to get from class to class so that he can participate in his inclusive program. The addition of orientation and mobility services to the list of identified related services is not intended to result in the denial of appropriate services for children with disabilities who do not have visual impairments or blindness.

The bill retains the 13 disability categories. However, the bill expands the definition for service eligibility in part B called "developmental delay," to be used at State and local discretion, for children ages three through nine. The use of a specific disability category to determine a child's eligibility for special education and related services frequently has led to the use of the category to drive the development of the child's Individualized Education Program (IEP) and placement to a greater extent than the child's needs.

The committee believes that, in the early years of a child's development, it is often difficult to determine the precise nature of the child's disability. Use of "developmental delay" as part of a unified approach will allow the special education and related services to be directly related to the child's needs and prevent locking the child

into an eligibility category which may be inappropriate or incorrect, and could actually reduce later referrals of children with disabilities to special education.

The committee wants to make clear that changing the terminology from "serious emotional disturbance" to "serious emotional disturbance (hereinafter referred to as 'emotional disturbance') in the definition of a child with a disability is intended to have no substantive or legal significance. It is intended strictly to eliminate the pejorative connotation of the term "serious. It should in no circumstances be construed to change the existing meaning of the term under 34 C.F.R. 300.7(b)(9) as promulgated September 29, 1992.

Policy letters and regulations

Section 607 maintains the requirements of current law that prescribe a 90-day public comment period for enacting proposed regulations under parts B and C, and establishes a baseline for regulations promulgated by the Secretary under the act that provides protections to children with disabilities. The section also specifies that the Secretary may not establish a rule required for compliance with, or eligibility under, this part without following the requirements of 5 U.S.C. 553. Section 607 also specifies that the Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate through various additional forms of communication, a list identifying the topic and other appropriate summary information, of correspondence from the Department of Education that describes its interpretation of IDEA or regulations issued by the Department in the previous quarter. Furthermore, if the Secretary receives a written request regarding a policy, question, or interpretation under part B of IDEA, and determines that it raises an issue of general interest or applicability of national significance to the implementation of part B, the Secretary shall include a statement to that effect in any written response; and widely disseminate that response to SEA's, LEA's, parent and advocacy organizations, and other interested organizations subject to appropriate confidentiality laws. The bill directs the Secretary not later than one year after responding on such a matter to issue written guidance on the policy, question, or interpretation through such means as a policy memorandum, notice of interpretation, or notice of proposed rulemaking.

The bill requires that those written responses by the Secretary shall include an explanation that the Secretary's written response is provided as informal guidance and is not legally binding; and represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the facts presented.

The committee recognizes the need for the Secretary to offer correspondence for a variety of reasons. Among those are technical assistance, interpretation and clarification of this act and the accompanying regulations, and monitoring for compliance. Section 607 of the bill is not intended to prohibit the Secretary from answering such correspondence.

The committee believes the guidance in section 607 is consistent with the public notice and comment procedures of the Administra-

tive Procedures Act and will provide all stake holders with a common frame of reference and expectation with regard to any particular written correspondence from the Secretary, its significance, and its future implications. With the enactment of section 607, such guidance should reduce substantially the degree and amount of misapplication or misinterpretation of Secretarial correspondence.

Amendments to part B of the Individuals with Disabilities Education Act

Funding formula

Section 611 of the act retains the disability child count-based formula in current law until the appropriation for part B of the IDEA reaches $4,924,672,200. When this threshold funding level is reached, a change in the funding formula for distributing funds to States will be triggered. At that point, yearly child counts based on disability will no longer determine a State's allotment. When the threshold funding level is reached, a State's allotment will be based on two calculations, which would be added together to determine the State's allotment under the new formula: (1) the amount the State received in the year prior to the threshold amount being reached; and (2) the State's proportional share of funds that exceed that previous year's appropriation, based 85 percent on the State's census data for children from 3 through 21 (if the State provides FAPE to children of these ages), and 15 percent on the State's poverty rate. Distribution of part B funds within States will be on the same basis.

The legislation caps the maximum increase for a State gaining from the change in formula and includes a floor for States receiving less under the change in formula. States would receive no more than 1.5 percent more than the total percent part B appropriations increase for that year. In addition, the State would receive no less than either 1.5 percent less than the total percent part B appropriations increase for that year or 90 percent of the total percentage increase, whichever is greater. No State will receive less than the amount it received in the prior year. In the year the new formula is triggered, the State minimum will become ⅓ of the one percent of the new formula funds.

The committee wishes to make clear that the change from a formula based on the number of children with disabilities to a formula based on census and poverty should in no way be construed to modify the obligation of educational agencies to identify and serve children with disabilities.

Section 501 of P.L. 95–134, permitting consolidation of grants, would not apply to the outlying areas or freely associated States under this section. The purpose of this was to assure that entities actually use IDEA funds for delivering services to children with disabilities.

The percentage of the appropriation that will go to the Secretary of the Interior to provide special education and related services to Indian children with disabilities has changed to 1.226 percent of the total appropriation. This percentage will provide the Secretary of the Interior the same amount of funding as the 1.25 percent did

under the past authorization, because the future amounts will come out of a larger base of funding in the total part B formula.

The committee developed the change in formula to address the problem of over-identification of children with disabilities. When the act was first passed in 1975, States were not providing educational services to many children with disabilities. Therefore, Congress proposed to distribute Federal Funds for special education services in order to encourage and reward States for serving eligible children. In the 22 years since then, the States have made excellent progress in identifying children with disabilities and providing them access to special education, and are now serving 5.5 million children with disabilities or approximately 10 percent of children aged 3 through 17. Logically, a formula was established at that time that based funding on counting the number of children with disabilities identified. This was to encourage States to locate children with disabilities.

Today, the growing problem is over identifying children as disabled when they might not be truly disabled. The challenge today is not so much how to provide access to special education services but how to appropriately provide educational services to children with disabilities in order to improve educational results for such children. As States consider this issue, more and more States are exploring alternatives for serving more children with learning problems in the regular educational classroom. But in doing so, they face the prospect of reductions in Federal funds, as long as funding is tied to disabled child counts.

While it is unlikely that individual educators ever identify children for the additional funding that such identification brings, the financial incentive reduces the scrutiny that such referrals would receive if they did not have the additional monetary benefit. It also reduces the scrutiny of children who might be moved back out of special education. In-State funding formulas that follow the current disability-based Federal child-count formula further reduce such scrutiny, with more children being identified to draw additional State funds.

This problem is most intense with minority children, especially African-American males. Over-identification of minority children, particularly in urban schools with high proportions of minority students, remains a serious and growing problem in this Nation. The problem also contributes to the referral of minority special education students to more restrictive environments.

The committee is also cognizant, however, that in some areas under identification remains a problem, particularly for minority children.

The committee has squarely faced this problem by shifting, once the targeted threshold is reached, to a formula of which 85 percent of additional funds is based on the total school age population and 15 percent is based on the poverty statistic for children in a State. This system was encouraged in the 1994 report of the Department of Education's Inspector General. The Inspector General noted: "Because [a population-based] method [of allocating funds] uses objective data derived for other purposes, [this method] eliminates the financial incentives for manipulating student counts [that exist in the current formula], including retaining students in special

education just to continue receiving Federal funds." The committee added a poverty factor to the formula because there is a link between poverty and certain forms of disability. This concept was also encouraged by the Inspector General's report.

Based on the significant progress that has been made in providing access to special education and concerns about the over-identification of children as disabled, the committee believes this new formula will address many of these concerns. This change will enable States to undertake good practices for addressing the learning needs of more children in the regular classroom without unnecessary categorization or labeling thereby risking the loss of Federal funds. Changing the Federal formula may also motivate States to change their own formulas for distributing State aid in ways that eliminate inappropriate financial incentives for referring children to special education.

The bill continues to authorize that States may retain a portion of their State allotments with certain changes effective for fiscal year 1998. First, the 5 percent for administrative purposes is capped at the fiscal year 1997 level, with future annual increases limited to the lesser of the rate of inflation or the rate of Federal appropriation increases. The remaining 20 percent of the State's share of its part B allotment is capped in the same manner. Any excess above inflation in any year goes into a new 1-year fund that must be distributed that year through grants to LEA's for local systemic improvement activities or for specific direct services. In the next year, the amounts expended for such activities must be distributed to LEA's based on the part B formula.

A new reporting provision was included for the Secretary of the Interior's Advisory Council. This is intended to provide a means of determining if the Advisory Council is carrying out its duties and whether the Secretary is incorporating the recommendations of the Council into the Department of the Interior's programs.

State eligibility

Section 612 establishes the conditions of State eligibility for part B funds. Many provisions are retained from current law. Other provisions have been added to promote a better understanding of, and more consistent compliance with, part B of the statute.

Provisions retained from current law are obligations of a State to: establish a full educational opportunity goal and a timetable for meeting it; comply with the evaluation and confidentiality, IEP, and procedural safeguards provisions; require that private placements made by public agencies meet State standards; not commingle part B funds with State funds; seek public comment prior to adopting policies and procedures necessary to comply with this section; and meet LEA eligibility requirements if the SEA provides direct services. In addition, section 612 retains the opportunity of a State to apply for a waiver from the "supplement not supplant" provision, when it can demonstrate, through clear and convincing evidence, that it is providing a free appropriate public education to all children with disabilities in the State.

Other provisions in section 612 taken from current law are: (1) the construction clause pertaining to the fact that part B does not permit a State to reduce medical or other assistance or alter eligi-

bility under titles V and XIX of the Social Security Act; and (2) the "by-pass" provision that allows the Secretary to make arrangements to provide services to children with disabilities in private schools, if a State is prohibited by State law from providing for the participation of such children.

Section 612 contains clarifications of current law. To receive part B funds, States are to make available a free appropriate public education to all children with disabilities, including children with disabilities who have been suspended or expelled from school. States must also conduct child find activities, which include identification of children in private schools and a process to determine which children are in need of special education and receiving it (while allowing identified children not to be labeled with a disability category).

The bill provides that a State may also opt not to serve individuals who, in the educational placement prior to their incarceration in adult correctional facilities, were not actually identified as being a child with a disability under section 602(3) or did not have an individualized education program under this part. The committee means to set the point in time when it is determined whether a child has been identified or had an IEP. This makes clear that services need not be provided to all children who were at one time determined to be eligible under this part. The committee does not intend to permit the exclusion from services under part B of children who had been identified as children with disabilities and had an IEP, but who had left school prior to their incarceration. In other words, if a child had an IEP in his or her last educational placement, the child has an IEP for purposes of this provision. The committee added language to make clear that children with disabilities aged 18 through 21, who did not have an IEP in their last educational placement but who had actually been identified should not be excluded from services.

The bill amends the provisions on least restrictive environment (redesignated as section 612(a)(5)) to ensure that the State's funding formula does not result in placements that violate the requirement that children be placed in the least restrictive environment.

The committee supports the longstanding concept of the least restrictive environment, including the policy that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of special education and related services or supplementary aids and services cannot be achieved satisfactorily.

The committee supports the longstanding policy of a continuum of alternative placements designed to meet the unique needs of each child with a disability. Placement options available include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. For disabled children placed in regular classes, supplementary aids and services and resource room services or itinerant instruction must also be offered as needed.

Section 612 also includes an obligation on a State to require LEA's to participate in transition planning conferences for toddlers with disabilities about to enter preschools; and to provide a proportionate amount of IDEA funds to private schools in which children with disabilities are enrolled, and, to the extent consistent with law, at State discretion, provide services on the premises of private, including parochial, schools.

Section 612 also includes several other factors that affect possible parental reimbursement for unilateral private placements of their child. Parents must give notice about their concerns and intent at the most recent IEP meeting or written notice 10 days before they transfer the child to the private school. Prior to removal of the child from the public school, if the public agency informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), the parents must make the child available for such an evaluation. If the parents do not comply with notice and evaluation requests or engage in unreasonable actions, hearing officers and courts may reduce or deny reimbursement to parents for unilateral private placements. The bill specifies that reduction or denial of reimbursement must not occur for parents' failure to comply with these requirements if parents are illiterate and cannot read English; compliance would result in physical or serious emotional harm to the child; the school prevented the parents from complying; or the parents had not received notice with regard to the potential consequences of noncompliance.

The bill strengthens the requirements on ensuring provision of services by non-educational agencies while retaining a single line of responsibility. The chief executive officer of a State must develop and implement interagency agreements and reimbursement mechanisms to ensure that educational agencies have access to funding from non-educational public agencies that are responsible for services that are also necessary for ensuring a free appropriate public education to children with disabilities.

A provision is added to the Act to strengthen the obligation to ensure that all services necessary to ensure a free appropriate public education are provided through the coordination of public educational and non-educational programs. This subsection is meant to reinforce two important principles: (1) that the State agency or LEA responsible for developing a child's IEP can look to noneducational agencies, such as Medicaid, to pay for or provide those services they (the noneducational agencies) are otherwise responsible for; and (2) that the State agency or LEA remains responsible for ensuring that children receive all the services described in their IEP's in a timely fashion, regardless of whether another agency will ultimately pay for the services.

The committee places particular emphasis in the bill on the relationship between schools and the State Medicaid Agency in order to clarify that health services provided to children with disabilities who are Medicaid-eligible and meet the standards applicable to Medicaid are not disqualified for reimbursement by Medicaid agencies because they are provided services in a school context in accordance with the child's IEP.

The bill makes a number of changes to clarify the responsibility of public school districts to children with disabilities who are placed by their parents in private schools. These changes should resolve a number of issues that have been the subject of an increasing amount of litigation in the last few years. First, the bill specifies that the total amount of money that must be spent to provide special education and related services to children in the state with disabilities who have been place by their parents in private schools is limited to a proportional amount (that is, the amount consistent with the number and location of private school children with disabilities in the State) of the Federal funds available under part B. Second, the bill specifies that school districts may provide the special education and related services funded under part B on the premises of private, including parochial, schools. This provision is designed to implement the principle underlying the ruling of the Supreme Court in *Zobrest* v. *Catalina Foothills School Dist.* that it was not an "entanglement" violation of the First Amendment to provide a sign interpreter paid for with IDEA funds to a deaf student at his parochial school. Third, the bill clarifies that the child-find, identification, and evaluation provision of section 612(a)(3) applies to children placed by their parents in private schools. Comparable language is also included in the child-find provision itself to make it clear that this obligation is independent from the participation requirements addressed in section 612(a)(10(A).

Section 612 also specifies that parents may be reimbursed for the cost of a private educational placement under certain conditions (i.e. when a due process hearing officer or judge determines that a public agency had not made a free appropriate public education available to the child, in a timely manner, prior to the parents enrolling the child in that placement without the public agency's consent). Previously, the child must have had received special education and related services under the authority of a public agency.

Section 612, as current law, requires that a State have in effect a Comprehensive System of Personnel Development (CSPD) that is designed to ensure an adequate supply of qualified personnel, including the establishment of procedures for acquiring and disseminating significant knowledge derived from educational research and for adopting, where appropriate, promising practices, materials, and technology. The bill requires the State to coordinate CSPD requirements with the personnel sections of a State improvement plan under part D, if the State has such a plan, so the State only has to meet one set of requirements for both purposes.

With regard to personnel standards, the bill adds two provisions to the standards in current law. Paraprofessionals and assistants must be appropriately trained and supervised in accordance with State law, regulations, or written policy in order to assist in the provision of special education and related services. In implementing the personnel standards requirements, a State may adopt a policy that includes a requirement that LEA's make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available whoa re making satisfactory progress to-

ward completing applicable course work necessary to meet State standards within 3 years.

With regard to section 612(a)(16), the committee wishes to make clear that its requirements are not intended to prevent the integration of performance goals and indicators for children with disabilities into the performance goals and indicators for nondisabled children, so that SEA's and LEA's can be held accountable for all children.

Section 612(a)(19) specifies that a State must maintain its level of expenditures for special education and related services for children with disabilities from one year to the next. Calculations of the level of expenditures may not include Federal or local dollars. Reductions from this level are allowed through a waiver from the Secretary for exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the State's financial resources. In the absence of a waiver situation, if a State fails to maintain its level of expenditures as required in this section, the Secretary shall reduce the State's allocation for any fiscal year following the year of the failure to maintain the level of effort required, by the same amount by which the State fails to meet the requirement.

The bill requires the Secretary, by regulation, to establish procedures for determining whether to grant a waiver under section 612(a)(19)(E) within one year of enactment based on compliance with the obligations of part B. These procedures are to include objective criteria and consideration of the results of compliance reviews of the State conducted by the Secretary. The committee intends this provision to be a real mechanism for waivers under this provision for States that are complying with their obligations under this act.

With regard to a State's advisory panel, in section 612(a)(21), the committee has added more detail relating to the panel's duties and added representation from private and public charter schools and from the State's juvenile and adult corrections agencies.

Section 612 contains several new provisions. It requires a State to establish performance goals for children with disabilities and to develop indicators to judge such children's progress. Any State that has a state improvement plan under part D must revise it based on information it obtains from the assessment of such progress. It requires that children with disabilities participate in State and districtwide assessments of student progress, with or without accommodations as appropriate for the child. By July 1, 2000, for children who cannot participate in such assessments, alternative assessments must be developed and conducted. The State must report to the public on the assessment performance of children with disabilities with the same frequency and detail it reports on the performance of nondisabled children, including the number participating in regular assessments and the number participating in alternative assessments. Data related to children with disabilities must be disaggregated. Further, the section requires States to determine if there is a disproportionate number of long-term suspensions and expulsions of disabled children and if so to take appropriate action and to modify policies and procedures in order to be consistent with the Act.

The section retains the provision in current law requiring that the SEA have general supervisory authority over educational programs for children with disabilities, but provides that the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the part B requirements are met with respect to children with disabilities who are convicted as adults under State law and are incarcerated in adult prisons. In addition, the provisions requiring participation of students with disabilities in Statewide assessments will not apply, the transition services requirements will not apply to students whose eligibility under IDEA will terminate before their release from prison, and the IEP team may modify a student's IEP/placement if the State has a bona fide security or compelling penological interest that cannot otherwise be accommodated. These changes, however, do not affect the student's eligibility for services under IDEA. Neither do they affect students who are in juvenile facilities.

The act specifies that if a State already has on file with the Secretary policies and procedures that demonstrate that it meets any requirement of section 612, it shall be treated by the Secretary as meeting that requirement, and that State applications need be submitted only once, and remain in effect, until the State submits modifications it deems necessary. Further, the Secretary may require a State to modify its application to the extent necessary to ensure compliance if the act or its regulations are amended, or there is a new interpretation by a Federal court or the State's highest court or an official Department of Education finding of noncompliance with Federal law or regulations. These modifications would be developed and submitted subject to the same process requirements as the original plan.

Local educational agency eligibility

Section 613 consolidates LEA eligibility requirements, which if met, make an LEA eligible for part B funding. The committee believes that these amendments will promote a better understanding of and more consistent compliance with part B of the IDEA.

In section 613, the following provisions are retained without substantive alteration: conditions associated with notice of LEA or State agency ineligibility; compliance with part B of the IDEA and State requirements associated with it; consequences connected to direct services by the SEA when an LEA cannot or does not provide a free appropriate public education to children with disabilities within its jurisdiction; and the conditions associated with the joint establishment of eligibility, except that the mandatory obligation on an LEA eligible for less than $7,500 to consolidate with another LEA is deleted.

Section 613 maintains the requirement that LEA's must provide information to the SEA so that the SEA will be able to carry out its responsibilities. A specific reference is added to this provision regarding information that must be provided by the LEA so that the SEA can comply with the CSPD and personnel standards requirements.

The committee also has included several modifications to current law in section 613. LEA's are required to submit an application

only once to the SEA, instead of once every three years as under current regulations. Additional information may be required by the SEA when there are: amendments to the Act or its Federal regulations; new interpretations of either the act or its regulations by Federal or State courts; or an official finding of noncompliance with Federal or State law or regulations. In these instances, the SEA may require an LEA to modify its application only to the extent necessary to ensure the LEA's compliance with part B of IDEA. This section also explicitly requires that an LEA make available to parents of children with disabilities and the general public all documents pertaining to the LEA's eligibility.

This section of the bill maintains the current "supplement not supplant" and maintenance of effort obligations on LEA's, except that LEA's are required to include only local funds expended for special education and related services in determining whether the LEA has maintained its effort. The bill includes a local maintenance of effort provision to ensure that the level of expenditures from State and local funds for the education of children with disabilities within each LEA does not drop below the level of such expenditures for the preceding year. However, the committee recognizes that there are times when appropriate exceptions to this rule must be made. Thus, the bill includes four specific exceptions:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel who are paid at or near the top of the agency's salary scale. This exception is included in recognition that, in some situations, when higher-salaried personnel depart from their positions in special education, they are replaced by qualified, lower-salaried staff. In such situations, as long as certain safeguards are in effect, the LEA should not be required to maintain the level of the higher-salaried departing personnel. In order for an LEA to invoke this exception, the agency must ensure that such voluntary retirement or resignation and replacement are in full conformity with existing school board policies in the agency, with the applicable collective bargaining agreement that is in effect at the time, and with applicable State statutes.

(2) A decrease in the enrollment of children with disabilities.

(3) The end of an agency's responsibility to provide an exceptionally costly program to a child with disability because the child has left the agency's jurisdiction, no longer requires such a program, or has aged-out with respect to the agency's responsibility.

(4) The end of unusually large expenditures for long term purchases such as equipment or construction.

Section 613 also provides that in any fiscal year for which amounts appropriated under 611 exceed $4.1 billion, an LEA may treat, as local funds, up to 20 percent of the funds it receives under part B that exceed the amount it received in the previous fiscal year, effectively permitting local schools to reduce the level of local expenditures for special education and related services. This section gives a State the authority to prevent an LEA from reducing its local level of effort when an LEA has been cited by the SEA as failing to substantially comply with the act. The committee does not intend that the Secretary could find an SEA out of compliance

based solely on the fact that LEA's in the State have reduced their effort under this provision.

New provisions in section 613 give LEA's increased flexibility in the use of part B funds. Section 613(a)(4)(A) allows an LEA to use part B funds for special education and related services provided in a regular class or other education related setting to a child with a disability in accordance with the child's IEP, even if one or more nondisabled children benefit from those services. In addition, section 613(g) allows an LEA, if granted the authority by the State, to use part B funds to permit a public school within the jurisdiction of the LEA to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes and activities described under the State Program Improvement Grant program under part D of these amendments. A school-based improvement plan must be designed to improve educational and transitional results for all children, consistent with section 613(a)(4)(A). The section also authorizes LEA's to use part B funds for school-wide programs, except that the amount of part B funds that may be used is limited to the number of disabled children in the school multiplied by the per child allotment.

Section 613 contains two provisions concerning how charter schools can use part B funds to serve children with disabilities. First, charter schools that are LEA's may not be required to apply for part B funds jointly with other LEA's unless State law specifies otherwise. Second, in situations where charter schools are within an LEA, the bill directs LEA's to serve children with disabilities attending charter schools in the same manner as it serves children with disabilities in its other schools and directs LEA's to provide part B funds to charter schools in the same manner they provide such funds to other schools. The committee expects that charter schools will be in full compliance with Part B.

Section 613 also provides that the State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program an any such statement of current or previous disciplinary action that has been taken against the child.

Evaluations, eligibility determinations, IEPs, and placements

The bill consolidates in section 614 all interrelated provisions regarding the evaluation and reevaluation of children with disabilities and the development, review, and revision of individualized education programs (IEP's) for these children. Most of these provisions are current law, as it is expressed in statute, regulations, and other regulatory guidance and policies from the U.S. Department

of Education. The committee anticipates that the consolidation of these provisions in one section, and the clarification of procedural and administrative requirements associated with them, will reduce the burdens imposed by the interpretations of current law and make the requirements more understandable. The committee expects that these particular amendments will facilitate State and local implementation of, and compliance with, these provisions.

Provisions on evaluation in section 614 codify the requirement that a full and individual initial comprehensive evaluation must be conducted before the provision of special education and related services; that the purposes of the initial evaluation are to determine whether a child is a child with a disability, and to determine the child's specific educational needs. The bill specifies that parents must provide informed consent before the initial evaluation of a child, but that such consent shall not be construed as consent for placement for the receipt of special education and related services. If a child's parents refuse consent for evaluation, an LEA may continue to pursue an evaluation by using the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

Reevaluations are to be conducted if conditions warrant a reevaluation or if the child's parents or teacher requests a reevaluation, but at least once every 3 years. Informed parental consent also must be obtained for reevaluations, except that such informed consent need not be obtained if the LEA can demonstrate that it has taken reasonable steps to obtain consent and the child's parents have failed to respond.

The bill requires that, in conducting evaluations, the LEA: (1) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information from the child's parents, to establish the child's eligibility and to determine the content of the child's IEP, including information relating to enabling the child to be involved in and progress in the general education curriculum; (2) not use any single procedure as the sole criterion for determining a child's eligibility or for determining an appropriate educational program for the child; and (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

In addition, the bill requires an LEA to ensure that: (1) tests and other evaluation materials used to assess a child are selected and administered so as not to be racially or culturally discriminatory, and are administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; (2) any standardized tests given to the child have been validated for the specific purpose for which they are used; are administered by trained and knowledgeable personnel; and are administered in accordance with the instructions provided by the producers of such tests; (3) the child is assessed in all areas of suspected disability; and (4) assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the child. These requirements reflect current policy contained in current law and regulations, but not for the first time, the bill codifies them in one section of statute.

The committee intends that professionals, who are involved in the evaluation of a child, given serious consideration at the conclusion of the evaluation process to other factors that might be affecting a child's performance. There are substantial numbers of children who are likely to be identified as disabled because they have not previously received proper academic support. Such a child often is identified as learning disabled, because the child has not been taught, in an appropriate or effective manner for the child, the core skill of reading. Other cases might include children who have limited English proficiency. Therefore, in making the determination of a child's eligibility, the bill states that a child shall not be determined to be a child with a disability if the determinant factor for such a determination is lack of instruction in reading or math or limited English proficiency. The committee believes this provision will lead to fewer children being improperly included in special education programs where their actual difficulties stem from another cause and that this will lead schools to focus greater attention on the these subjects in the early grades.

The bill specifies that the determination of a child's eligibility is to be made by a qualified team of professionals and the child's parents. The bill requires that a copy of the evaluation report and the documentation of the child's eligibility determination be given to the child's parents.

One of the most significant changes in the bill relates to how the evaluation process should be viewed. For example, over the years, the required 3-year reevaluation has become a highly paperwork-intensive process, driven as much by concern for compliance with the letter of the law, as by the need for additional evaluation information about a child. The committee believes that a child should not be subjected to unnecessary tests and assessments if the child's disability has not changed over the three-year time period, and the LEA should not be saddled with associated expenses unnecessarily. If there is no need to collect additional information about a child's continuing eligibility for special education, any necessary evaluation activities should focus on collecting information about how to teach and assist the child in the way he or she is most capable of learning.

Thus, provisions in the bill require that existing evaluation data on a child be reviewed to determine if any other data are needed to make decisions about a child's eligibility and services. If it is determined by the IEP team and other qualified professionals that additional data are not needed, the parents must be so notified of the determination that no additional data are needed, the reasons for it, and of the parents' right to still request an evaluation. Unlike current law, however, no further evaluations will be required at that time unless requested by the parents.

To assist in improved compliance with the IEP provisions, the committee placed all provisions pertaining to the IEP, including the definitions of the IEP and the IEP Team, in section 614(d). The definition of the Individualized Education Program includes all of the required elements of an IEP, beginning with a statement of a child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general education curriculum, or for a preschool child with a dis-

ability, how the child's disability affects the child's participation in appropriate activities. The IEP should also address the unique needs of the child that arise out of his or her disability that must be addressed in order for the child to progress in the general education curriculum, such as the need of a blind child to read Braille, or of a cognitively disabled child to receive transportation training (*i.e.*, how to use public transportation). The committee wishes to emphasize that, once a child has been identified as being eligible for special education, the connection between special education and related services and the child's opportunity to experience and benefit from the general education curriculum should be strenghtened. The majority of children identified as eligible for special education and related services are capable of participating in the general education curriculum to varying degrees with some adaptations and modifications. This provision is intended to ensure that children's special education and related services are in addition to and are affected by the general education curriculum, not separate from it.

The new emphasis on participation in the general education curriculum is not intended by the committee to result in major expansions in the size of the IEP of dozens of pages of detailed goals and benchmarks or objectives in every curricular content standard or skill. The new focus is intended to produce attention to the accommodations and adjustments necessary for disabled children to access the general education curriculum and the special services which may be necessary for appropriate participation in particular areas of the curriculum due to the nature of the disability.

Specific day-to-day adjustments in instructional methods and approaches that are made by either a regular or special education teacher to assist a disabled child to achieve his or her annual goals would not normally require action by the child's IEP team. However, if changes are contemplated in the child's measurable annual goals, benchmarks, or short term objectives, or in any of the services or program modifications, or other components described in the child's IEP, the LEA must ensure that the child's IEP team is reconvened in a timely manner to address those changes.

The bill requires that a child's IEP include a statement of measurable annual goals, including benchmarks or short-term objectives. The committee views this requirement as crucial. It will help parents and educators determine if the goals can reasonably be met during the year, and as important, allow parents to be able to monitor their child's progress. The bill requires that annual goals included in a child's IEP relate to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in and progress in the general education curriculum." This language should not be construed to be a basis for excluding a child with a disability who is unable to learn at the same level or rate as nondisabled children in an inclusive classroom or program. It is intended to require that the IEP's annual goals focus on how the child's needs resulting from his or her disability can be addressed so that the child can participate, at the individually appropriate level, in the general curriculum offered to all students.

Prior to the enactment of P.L. 94–142 in 1975, the opportunity and inclination to educate children with disabilities was often in separate programs and schools away from children without disabil-

ities. The law and this bill contain a presumption that children with disabilities are to be educated in regular classes. Therefore, the legislation requires that the IEP include an explanation of the extent, if any, to which a child with a disability will not participate with nondisabled children in the regular class and in the general education curriculum including extra-curricular and nonacademic activities.

This committee recognizes that every decision made for a child with a disability must be made on the basis of what that individual child needs. Every child is unique and so will be his or her program needs. Nonetheless, when the decision is made to educate the child separately, an explanation of that decision will need, at a minimum, to be stated as part of the child's IEP.

Children with disabilities must be included in State and district-wide assessments of student progress with individual modifications and accommodations as needed. Thus, the bill requires that the IEP include a statement of any individual modifications in the administration of State and district-wide assessments. The committee knows that excluding children with disabilities from these assessments severely limits and in some cases prevents children with disabilities, through no fault of their own, from continuing on to post-secondary education. The bill requires that if the IEP team determines that the child's performance cannot appropriately be assessed with the regular education assessments, even with individual modifications, the IEP must include a statement of why the assessment is not appropriate and alternative assessments must be made available. The committee reaffirms the existing Federal law requirement that children with disabilities participate in State and districtwide assessments. This will assist parents in judging if their child is improving with regard to his or her academic achievement, just as the parents the parent of nondisabled children do.

As under current law, a child's IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child. The committee intends that, while teaching and related services methodologies or approaches are an appropriate topic for discussion and consideration by the IEP team during IEP development or annual review, they are not expected to be written into the IEP. Furthermore, the committee does not intend that changing particular methods or approaches necessitates an additional meeting of the IEP Team. Additionally, the committee is aware of, and endorses, the provision in section 300.350 of the current regulations relating to personal accountability. The regulation provides that each public agency must provide special education and related services to a child with a disability in accordance with an IEP. However, part B does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

The location where special education and related services will be provided to a child influences decisions about the nature and amount of these services and when they should be provided to a child. For example, the appropriate place for the related service may be the regular classroom, so that the child does not have to choose between a needed service and the regular educational pro-

gram. For this reason, in the bill the committee has added "location" to the provision in the IEP that includes "the projected date for the beginning of services and modifications, and the anticipated frequency, *location*, and duration of those services" (emphasis added).

The bill requires that the IEP include, beginning at age 14 "a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced placement courses or a vocational education program)." The purpose of this requirement is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school. This provision is designed to augment, and not replace, the separate transition services requirement, under which children with disabilities beginning no later than age sixteen receive transition services including instruction, community experiences, the development of employment and other post-school objectives and, when appropriate, independent living skills and functional vocational evaluation. For example, for a child whose transition goal is a job, a transition service could be teaching the child how to get to the job site on public transportation.

Current law is not clear on what is required when a child with a disability attains the age of majority. In order to clarify the situation, the IEP definition in the bill includes a statement that the child has been informed of his or her rights under part B, if any, that will transfer to the child when he or she attains the age of majority. The bill clarifies that when a child is considered incapable of making educational decisions, the State will develop procedures for appointing the parent or another individual to represent the interests of the child. This transfer of rights is also addressed under section 615(m) in the bill.

Additionally, the bill requires that a child's IEP include a statement of how the child's progress toward the annual goals will be measured and how the child's parents will be regularly informed of the child's progress toward those goals (by such means as report cards) as often as parents are informed of their nondisabled children's progress. The committee believes that informing parents of children with disabilities as often as other parents will, in fact, reduce the cost of informing parents of children with disabilities and facilitate more useful feedback on their child's performance. One method recommended by the committee would be providing an IEP report card with the general education report card, if the latter is appropriate and provided for the child.

An IEP report card could also be made more useful by including checkboxes or equivalent options that enable the parents and the special educator to review and judge the performance of the child.

An example would be to state a goal or benchmark on the IEP report card and rank it on a multipoint continuum. The goal might be, "Ted will demonstrate effective literal comprehension." The ranking system would then state the following, as indicated by a checkbox: No progress; some progress; good progress; almost complete; completed. Of course, these concepts would be used by the school and the IEP team when appropriate. This example is not in-

tended to indicate the committee's preference for a single means of compliance with this requirement.

The bill's definition of the Individualized Education Program team includes the parents of a child with a disability; at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment); at least one special education teacher, or where appropriate, at least one special education provider of such child; a representative of the local educational agency who is (a) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (b) knowledgeable about the general curriculum; and (c) knowledgeable about the availability of resources of the local educational agency; an individual who can interpret the instructional implications of evaluation results, who may be a member of the team; at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and whenever appropriate, the child with a disability. Very often, regular education teachers play a central role in the education of children with disabilities. In that regard the bill provides that regular education teacher, participate on the IEP team, but this provision is to be construed in light of the bill's proviso that the regular education teacher, to the extent appropriate, participate in the development of the IEP of the child. The committee recognizes the reasonable concern that the provision including the regular education teacher might create an obligation that the teacher participate in all aspects of the IEP team's work. The committee does not intend that to be the case and only intends it to be the extent appropriate. The committee wishes to emphasize that the "support" for school personnel, which is stated in the child's IEP, is that support that will assist them to help a particular child progress in the general education curriculum.

Related services personnel should be included on the team when a particular related service will be discussed at the request of a child's parents or the school. Such personnel can include personnel knowledgeable about services that are not strictly special education services, such as specialists in curriculum content areas such as reading. Furthermore, the committee recognizes that there are situations that merit the presence of a licensed registered school nurse on the IEP team. The committee also recognizes that schools sometimes are assumed to be responsible for all health-care costs connected to a child's participation in school. The committee wishes to encourage, to the greatest extent practicable and when appropriate, the participation of a licensed registered school nurse on the IEP team to help define and make decisions about how to safely address a child's educationally related health needs.

The bill also clarifies obligations in two areas. First, nothing in section 614 may be construed to require the IEP team to include information under one component of a child's IEP that is already contained in another component. Second, section 614 requires that each LEA or State educational agency ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. The committee expects that the majority of placement decisions will be made

by the IEP team, but in those unique cases where it is not, the committee expects parents to be involved in the group making the decision.

The bill requires that, at the beginning of every school year, an IEP be in effect for each child with a disability served by an LEA, a State agency, or an SEA. In the case of a child with a disability aged 3 through 5 (or at the discretion of the State educational agency, a 2-year old child with a disability who will turn 3 during the school year), an individualized family service plan that contains the requirements described in section 636, and that is developed in accordance with section 614, may serve as the child's IEP if using that plan as the IEP is consistent with State policy and agreed to by the agency and the child's parents.

The bill specifies that the LEA shall ensure that a child's IEP team review a child's IEP periodically, but not less than annually to determine whether the annual goals of the child are being achieved; and revises the IEP as appropriate to address: (1) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; (2) the results of any reevaluation; (3) information provided by or to the parents; (4) the child's anticipated needs; or (5) other matters.

With regard to transition services in IEP's, the bill provides that if an agency, other than the LEA, participating in the child's education fails to provide the transition services described in the child's IEP, the LEA must reconvene the IEP team to identify alternative strategies to meet the child's transition objectives.

In developing a child's IEP, the bill requires that the IEP team consider the strengths of the child and the concerns of the parents for enhancing the education of their child; and the results of the initial evaluation or most recent evaluation of the child. In addition, the committee believes that a number of considerations are essential to the process of creating a child's IEP. The purpose of the IEP is to tailor the education to the child; not tailor the child to the education. If the child could fit into the school's general education program without assistance, special education would not be necessary.

The bill provides that, in the case of a child whose behavior impedes the learning of the child or others, the IEP team, as appropriate, shall consider strategies, including positive behavior interventions strategies and supports, to address that behavior. Similarly, in the case of a child with limited English proficiency, the IEP team is to consider the language needs of the child as such needs relate to the child's IEP. In the case of a child who is blind or visually impaired, the IEP team must provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

The team also is to consider the communication needs of the child in order to ensure that local educational agencies better understand the unique needs of children who are deaf or hard of hearing. Section 614(d)(3)(B)(iv) includes special factors that must

be considered in developing IEP's for these children. The policy included in the bill provides that, in the case of the child who is deaf or hard of hearing, the IEP team must consider the language and communication needs of the child; opportunities for direct communication with peers and professional personnel in the child's language and communication mode; the child's academic level; and the child's full range of needs, including the child's social, emotional, and cultural needs and opportunities for direct instruction in the child's language and communication mode. The committee also intends that this provision will be implemented in a manner consistent with the policy guidance entitled "Deaf Students Education Services," published in the Federal Register (57 Fed. Reg. 49274, October 30, 1992) by the U.S. Department of Education.

The bill further requires that the IEP team consider the provision of assistive technology devices and services when developing the child's IEP.

Procedural safeguards

The procedural safeguards in the IDEA have historically provided the foundation for ensuring access to a free appropriate public education for children with disabilities. Key to these due process procedures is the law's "stay put" provision, which this bill retains. The committee has added clarifications to the procedural safeguard provisions to facilitate conflict resolution, describe how schools may discipline children with disabilities, and ensure that due process is useful for all parents and schools.

The bill retains all provisions concerning the opportunity to use, and the administrative procedures associated with, an impartial due process hearing, and appeals through state-level reviews, and the courts, as well as certain existing exceptions to reductions in attorneys' fees.

The bill simplifies the process of delivering, and the content of, notices to parents about their child's rights. The committee hopes that these provisions will result in user-friendly information that parents can understand.

In section 615 of the bill, provisions affecting possible reduction of attorneys' fees to prevailing parents are retained from current law. A provision has been added that would allow parents' attorneys' fee to be reduced, if the attorney representing the parents did not provide the LEA with specific information about the child and the basis of the dispute; specifically: (1) the name of the child, the address of the residence of the child, and the name of the school the child is attending; (2) a description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to that problem; and (3) a proposed resolution of the problem, to the extent known and available to the parents at the time. The committee believes that the addition of this provision will facilitate an early opportunity for schools and parents to develop a common frame of reference about problems and potential problems that may remove the need to proceed to due process and instead foster a partnership to resolve problems.

The committee believes that the IEP process should be devoted to determining the needs of the child and planning for the child's education with parents and school personnel. To that end, the bill

specifically excludes the payment of attorneys' fees for attorney participation in IEP meetings, unless such meetings are convened as a result of an administrative proceeding or judicial action.

Questions have been raised regarding the relationship between the extent of success of the parents and the amount of attorneys' fees a court may award. In addressing this question, the committee believes the amount of any award of attorneys' fees to a prevailing party under part B shall be determined in accordance with the law established by the Supreme Court in *Hensley* v. *Eckerhart*, 461 U.S. 424 (1983) and its progeny.

As we stated in the 1986 report accompanying the legislation that added the attorneys' fees provisions: "It is the committee's intent that the terms 'prevailing party' and 'reasonable' be construed consistent with the U.S. Supreme Court's decision in *Hensley* v. *Eckerhart*, 461 U.S. 424, 440 (1983). In this case, the Court held that:

> the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees. Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fees reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.

To encourage early resolution of problems whenever possible, section 615 requires States to offer mediation as a voluntary option to parents and LEA's as an initial process for resolving disputes. However, the bill requires that a State's mediation system may not be used to delay or deny a parents right to due process. The bill allows SEA's and LEA's to establish procedures to require parents who choose not to engage in mediation to meet, at a time and place convenient for them, with a disinterested party who would encourage and explain the benefits of mediation. This individual would be under contract with either a Parent Training and Information Center funded under part D or an alternative dispute resolution entity.

The committee believes that, in States where mediation is not offered, mediation is proving successful both with and without the use of attorneys. Thus, the committee wishes to respect the individual State procedures with regard to attorney use in mediation, and therefore, neither requests nor prohibits the use of attorneys in mediation. The committee is aware that, in States where mediation is being used, litigation has been reduced, and parents and schools have resolved their differences amicably, making decisions with the child's best interest in mind. It is the committee's strong preference that mediation become the norm for resolving disputes under IDEA. The committee believes that the availability of mediation will ensure that far fewer conflicts will proceed to the next procedural steps, formal due process and litigation, outcomes that the

committee believes should be avoided when possible. Section 615(e)(2)(B) of the bill provides that the State shall maintain a list of individuals who are qualified mediators. The committee intends that, whenever such a mediator is not selected on a random basis from that list, both the parents and the agency are involved in selecting the mediator, and are in agreement with the individual who is selected. The committee further intends that any individual who serves as an impartial mediator under part B of IDEA may not be an employee of any local educational agency or State agency described in section 613(h), and not be a person having a personal or professional conflict of interest. Individuals who serve as mediators under part C of this bill are expected to be selected in the same manner described in this paragraph and to meet the same criteria of impartiality with respect to employment in the lead agency and not having a personal or professional conflict of interest. The committee believes that mediators should be experienced, trained, and understand the law. The committee clearly does not intend that all mediators be attorneys. Section 615 also specifies that a State will bear the cost of mediation.

The legislation requires that agreements reached in mediation shall be put in writing. Furthermore, the amendments require that discussions held in mediation would be confidential and could not be used as evidence in any subsequent due process hearing or civil action. However, the committee intends that nothing in this bill shall supersede any parental access rights under the Family Educational Rights and Privacy Act of 1974 or foreclose access to information otherwise available to the parties. Mediation parties may enter into a confidentiality pledge or agreement prior to the commencement of mediation. An example of such an agreement follows:

> a. The mediator, the parties, and their attorneys agree that they are all strictly prohibited from revealing to anyone, including a judge, administrative hearing officer or arbitrator the content of any discussions which take place during the mediation process. This includes statements made, settlement proposals made or rejected, evaluations regarding the parties, their good faith, and the reasons a resolution was not achieved, if that be the case. This does not prohibit the parties from discussing information, on a need-to-know basis, with appropriate staff, professional advisors, and witnesses.
>
> b. The parties and their attorneys agree that they will not at any time, before, during, or after mediation, call the mediator or anyone associated with the mediator as a witness in any judicial, administrative, or arbitration proceeding concerning this dispute.
>
> c. The parties and their attorneys agree not to subpoena or demand the production of any records, notes, work product, or the like of the mediator in any judicial, administrative, or arbitration proceeding concerning this dispute.
>
> d. If, at a later time, either party decides to subpoena the mediator or the mediator's records, the mediator will move to quash the subpoena. The party making the demand agrees to reimburse the mediator for all expenses in-

curred, including attorney fees, plus the mediator's then-current hourly rate for all time taken by the matter.

e. The exception to the above is that this agreement to mediate and any written agreement made and signed by the parties as a result of mediation may be used in any relevant proceeding, unless the parties agree in writing not to do so. Information which would otherwise be subject to discovery, shall not become exempt from discovery by virtue of it being disclosed during mediation.

Section 615 adds a provision that requires that five business days prior to a due process hearing, each party disclose to other parties all evaluations completed by that date and recommendations associated with those evaluations that are to be used at the hearing. If any party fails to provide such information within the time specified in the bill, the hearing officer may bar that party from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Section 615(j) provides that, except as provided in 615(k)(7), during the pendency of any proceedings conducted pursuant to section 615, unless the State or LEA and the parents otherwise agree, the child shall remain in the then current educational placement of such child, or if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program, until all such proceedings have been completed.

The committee recognizes that school safety is important to educators and parents. There has been considerable debate and concern about both if and how those few children with disabilities who affect the school safety of peers, teachers, and themselves may be disciplined when they engage in behaviors that jeopardize such safety. In addition, the committee is aware of the perception of a lack of parity when making decisions about disciplining children with and without disabilities who violate the same school rule or code of conduct. By adding a new section 615(k) to IDEA, the committee has attempted to strike a careful balance between the LEA's duty to ensure that school environments are safe and conducive to learning for all children, including children with disabilities, and the LEA's continuing obligation to ensure that children with disabilities receive a free appropriate public education. Thus, drawing on testimony, experience, and common sense, the committee has placed specific and comprehensive guidelines on the matter of disciplining children with disabilities in this section.

It is the committee's intent that this set of practical and balanced guidelines reinforce and clarify the understanding of Federal policy on this matter, which is currently found in the statue, case law, regulations, and informal policy guidance. By placing all pertinent guidance in one place, the committee anticipates that educators will have a better understanding of their areas of discretion in disciplining children with disabilities and that parents will have a better understanding of the protections available to their children with disabilities.

The bill codifies current law by allowing school personnel to order a change in the placement of a child with a disability to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent

such alternatives would be applied to children without disabilities). The bill also provides two exceptions to the pendency provision under section 615(j). First, the bill allows school personnel to order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if the child carries a weapon to school or to a school function under the jurisdiction of a State or an LEA; or the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or an LEA. The appropriate interim alternative educational setting shall be determined by the IEP team.

The bill requires that, either before or not later than 10 days after taking such a disciplinary action, if the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension, the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or, if the child already has a behavior intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior.

Under the second exception to the pendency provision, a hearing officer is permitted to order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the impartial hearing officer determines at the hearing that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others; considers the appropriateness of the child's current placement; considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and determines that the interim alternative educational setting enables the child to continue to participate in the general education curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and includes services and modifications designed to address the behavior so that it does not recur.

The standard "substantially likely to result in injury to the child or others" codifies the standard established by the Supreme Court in *Honig* v. *Doe*. The bill requires the impartial hearing officer to consider the appropriateness of the child's placement and efforts by the school district to minimize the risk of harm in the child's current placement, including through use of supplementary aids and services. If the school district has failed to provide the child an appropriate placement or to make reasonable efforts to minimize the risk of harm, the appropriate response by an impartial hearing officer is to deny the school district's request to move the child to an alternative setting and to require the district to provide an appropriate placement and make reasonable efforts to minimize the risk of harm. Thus, it will not be permissible to move a child when the child's behavior can be addressed in the current placement.

Section 615(k)(10)(C) defines the term "substantial evidence" as used in section 615(k). The term means evidence that is beyond a preponderance of the evidence. The standard in 615(k)(2)(A) that maintaining a child in the current placement is substantially likely to result in injury to the child or others codifies the standard set by the Supreme Court in *Honig* v. *Doe*.

The bill requires that, if a disciplinary action is contemplated either as described in the preceding paragraphs for a behavior of a child with disability or if involving a change in placement for more than 10 school days for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children, not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under section 615 of IDEA. In addition, immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action, a review shall be conducted by the IEP team and other qualified personnel of the relationship between the child's disability and the behavior subject to the disciplinary action.

The bill allows for a change of setting for the educational services provided a child with disability in the two specific circumstances identified above, but it does not change the other requirements of the act. The bill describes the standards that that setting—the interim alternative educational setting—must meet. It must be a setting, although a different setting, where the child can continue to participate in the general curriculum, and continue to receive the general curriculum services and modifications, including those in the child's current IEP, so that the child can meet the goals of that IEP, and it must include services or modifications designed to address (so that it does not recur) the behavior that led to the child's placement in the interim alternative educational setting.

The bill prescribes the relevant information that must be considered by the IEP team in carrying out a review in terms of the behavior subject to the disciplinary action—all relevant information, including evaluation and diagnostic results, including relevant information supplied by the parents, observations of the child, and the child's IEP and placement. The committee limits the scope of this review by including the phrases "in relationship to the behavior subject to disciplinary action" and "behavior subject to disciplinary action".

In addition, this section prescribes, also in terms of the behavior subject to disciplinary action, the standards for determining whether or not the behavior of the child was a manifestation of the child's disability:

The IEP team must determine that—

(1) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate, and special education and related services, and supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(2) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(3) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

The committee offers the following clarification with respect to the first standard in section 615(k)(4)(C)(ii). This standard recognizes that where there is a relationship between a child's behavior and the failure to provide or implement an IEP or placement, the IEP team must conclude that the behavior was a manifestation of the child's disability. Similarly, where the IEP team determines that an appropriate placement and IEP were provided, the IEP team must then determine that the remaining two standards have been satisfied. This section is not intended to require in IEP team to find that a child's behavior was a manifestation of a child's disability based on a technical violation of the IEP or placement requirements that are unrelated to the educational/behavior needs of the child.

Section 615(k)(5) of the legislation codifies current law, which permits a public agency to apply to a child whose behavior is not a manifestation of the child's disability the same disciplinary procedures that apply to children without disabilities. This section must be construed in light of the act's obligation not to terminate services to children with disabilities and the pendency provision. A child with a disability would not be subject to disciplinary action for behavior that was a manifestation of the child's disability.

To promote the timely sharing of relevant information, section 615(k) of the bill requires that, if the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

The committee also addresses parents' appeal options in section 615(k) of the bill. If parents disagree with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parents may request a hearing. In such a case, the State or LEA shall arrange for an expedited hearing.

In reviewing a decision with respect to the manifestation determination in an expedited hearing, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C), used by an IEP team when determining whether a behavior is or is not a manifestation of the disability. That is, the hearing officer in an expedited hearing, would determine that (1) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate, and special education services and related services, supplementary aids and services, and behavior intervention strategies were consistent with the child's IEP; (2) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and (3) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

The bill requires that, before a hearing officer in an expedited due process hearing selects an interim alternative educational set-

ting for a child, the officer is to: determine if the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others; consider the appropriateness of the child's current placement; consider whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and determine that the interim alternative educational setting meets two requirements. First, it must enable the child to continue to participate in the general education curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and second, it must include services and modifications designed to address the behavior subject to discipline so that it does not recur.

When parents request a hearing regarding a disciplinary action with respect to weapons, illegal drugs, or a controlled substance or actions that are substantially likely to result in injury to the child or others or to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for *i.e.*, the same amount of time that a child without a disability would be subject to discipline but not more than 45 days) in section 615 (1)(A)(ii) or (2) of the bill, whichever occurs first, unless the parents and the State of LEA agree otherwise.

If a child is placed in an interim alternative educational setting for the reasons described in Section 615(k) (1)(ii) or (2) and school personnel propose to change the child's placement after expiration of the interim alternative educational placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (*i.e.*; the child's placement prior to the interim alternative educational setting). In the bill the committee allows an exception. If school personnel maintain that is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the district may request an expedited hearing.

In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out above. That is, the officer is to: (1) determine if the public agency has demonstrated by substantial evidence that permitting the child to return to his or her current placement (the child's placement prior to the interim alternative educational setting); is substantially likely to result in injury to the child or to others; (2) consider the appropriateness of the child's current placement (the child's placement prior to the interim alternative educational setting); (3) consider whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement (the child's placement prior to the interim alternative educational setting), including the use of supplementary aids and services; and (4) determine that the continued use of an interim alternative educational setting meets these requirements:

(a) enables the child to continue to participate in the general education curriculum, although in another setting other than the original placement, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and (b) includes services and modifications designed to address the behavior subject to discipline so that it does not recur.

In the bill, the committee addresses the issue of disciplining children not yet eligible under part B of the IDEA. A child who has not been determined to be eligible for special education and related services under part B and who has engaged in behavior that violated any rule or code of conduct of the LEA may assert any of the protections provided for in part B of IDEA, if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. An LEA shall be deemed to have had knowledge that a child is a child with a disability if the parents of the child have expressed concern in writing (unless the parents are illiterate or have a disability that prevents compliance with the requirements of this clause) to personnel of the appropriate educational agency that the child needs special education and related services; the behavior or performance of the child demonstrates the need for such services; the parent of the child has requested an evaluation of the child under section 614, or the child's teacher, or other LEA personnel, has expressed concern about the behavior or performance of the child to the director of special education or to other agency personnel.

If an LEA does not have knowledge, or could not reasonably have known, that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to children without disabilities, who engaged in comparable behaviors, consistent with section 615(k)(2) pertaining to the authority of a hearing officer.

If a request is made for an evaluation of a child during the time period in which the child is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with part B, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

In the bill, the committee clarifies that nothing in part B shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

The ensure uniformity in the application of the provisions that have safety implications in section 615(k), the terms "controlled

substance," "illegal drug," and "weapon" have been defined in the bill. "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). The term "illegal drug" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)), but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substance Act or under any other provision of Federal law. "Weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

Withholding and judicial review

The committee recognizes and fully expects that the Secretary will utilize the board enforcement authority available for ensuring compliance with and implementation by State educational agencies with the applicable provisions of part B. The bill authorizes the Secretary to withhold part B funds, in whole or in part, from States that are not in compliance with part B. Thus, based on the nature and degree of noncompliance, the Secretary may determine the level of funding to be withheld and the type of funding to withhold e.g., the entire State set-aside or the set-aside for administrative purposes).

The committee expects the Secretary to initiate actions to ensure enforcement, including the reexamination of current Federal monitoring and compliance procedures to improve the implementation of the law, and a subsequent annual report to Congress which evaluates the impact of the improved procedures on compliance. The committee also expects that the Secretary's reexamination of current enforcement procedures will place strong emphasis on: (1) including parents in the state monitoring process; (2) focusing monitoring efforts on the issues that are most critical to ensuring appropriate education to children with disabilities, and (3) timely follow-up to ensure that a State has taken appropriate action to demonstrate compliance with the law.

In addition, the Secretary may initiate other actions to ensure enforcement, such as requiring the State to submit a detailed plan for achieving compliance, imposing special considerations on the State's part B grant, referring the matter to the Department of Justice for appropriate enforcement action, and other enforcement actions authorized by law.

The committee has included in express reference "referral to the Department of Justice" in section 616(a)(1)(B) to the authority now in current law of the Department of Education to refer instances of noncompliance to other agencies. In reiterating this authority, the committee does not intend to expand present enforcement powers of any other Department, nor establish any new rights of action against State or local governments, education agencies, or private parties.

Similar enforcement authorities exist for States to ensure that local educational agencies meet their responsibilities under the Individuals with Disabilities Education Act.

Data collection

The legislation substantially streamlines the current data collection requirements by eliminating reporting on the services needed, by disability category, for children leaving the educational system, and the number and type of personnel employed and data on current and projected personnel needs. New reporting requirements are added in the bill for, the number of children moved to interim alternative educational settings, and the number of infants and toddlers at risk of developing developmental delays. The bill allows the Secretary of Education discretion to allow States and the Secretary of the Interior to collect needed data through sampling.

Because of the committee's desire to see the problem of over identification of minority children addressed the bill requires States to provide for the collection and examination of data to determine if significant disproportionality based on race is occurring with respect to particular disability categories or types of educational setting.

The preschool program

The legislation amends the section 619 Preschool Grants program to conform with the funding formula changes for the section 611 Grants to States program. Under the news formula, no State would receive less than it received in fiscal year 1997. Beginning in fiscal year 1998, all new appropriations above the FY 97 level will be 85 percent based on the general population of children aged 3 through 5, and 15 percent on the poverty rate in the State. The formula also includes the same minimum and maximum allocation provisions that apply to the new formula under the Grants to States program. These provisions ensure that every State receives part of any increase, and there is no radical shift in resources.

The legislation would eliminate funding for the Outlying Areas under the Preschool Grants program and add an amount equivalent to the amount received in fiscal year 1997 to the fiscal year 1998 allocations the Outlying Areas would otherwise receive under the Grants to States program. This would maintain overall funding for the Outlying Areas while eliminating paperwork associated with their allocations under the Preschool Grants program, which is unduly burdensome for the Outlying Areas given the nominal amount of funding involved.

Unlike the Grants to States program, the new funding formula for Preschool Grants takes effect on July 1, 1998.

Amendments to part C of the Individuals with Disabilities Education Act

The bill reorganizes part H which authorizes the early intervention program as part C.

The committee continues to recognize the importance of early intervention for infants and toddlers with disabilities from birth through age two. Infants and toddlers with disabilities whose families receive early intervention services often need less intensive

services when they reach school age. The committee believes that it is in the best interest of the infants and toddlers, their families, schools, and society in general that these services continue to be provided.

The bill retains current law and adds clarifications with regard to a State is discretion when it elects to address the needs of infants and toddlers at risk of having substantial developmental delays if they do not receive early intervention services. To provide greater flexibility in addressing the needs of "at-risk infants and toddlers" in those States not currently serving such children, the bill permits a State to use its part C funds for initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including: establishing linkages with public and private organizations, services and personnel for identifying and evaluating at-risk infants and toddlers; referring those children to other (nonpart C) services; and conducting periodic follow-ups on each referral to determine if the child's eligibility under part C has changed.

While the provision in the preceding paragraph applies only to States that do not serve at-risk infants and toddlers under part C, States that are serving those infants and toddlers may carry out these activities as well, under the general authority to use part C funds to implement the components of statewide systems. The provision addressed in the preceding paragraph is intended to provide both clear authority and an incentive for States that are not serving at-risk infants and toddlers, not to penalize States already doing so.

The committee has addressed the serious problem of personnel shortages in the provision of early intervention services. The bill adds a provision that allows paraprofessionals and assistants, who are appropriately trained and supervised, in accordance with State law and regulations, or written policy, to assist in the provision of early intervention services to infants and toddlers with disabilities under part C. With regard to personnel standards, the bill, as does current law, clarifies that, to the extent that the standards met by providers of early intervention services in a State are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is to take steps to require the retraining or hiring of personnel that meet appropriate professional requirements in the State. In addition, the bill in part C clarifies this State responsibility in a manner that conforms to parallel language in part B.

The bill describes the assurances a State must submit as part of its application for funding under part C.

The bill clarifies that part C is truly the payer of last resort even for military families who are eligible for medical programs administered by the Department of Defense. The committee does not intend to change the types of services that are currently covered by DOD programs nor expect that the services covered under DOD medical programs will change.

Changes are made to the provisions for submission of State applications, consistent with similar changes in part B.

The bill includes an authorization level for part C of $400 million. The committee recognizes the effort, both fiscally and

programmatically, that all States are making through part C and the current Federal/State partnership in this important effort.

Amendments to part D of the Individuals with Disabilities Education Act

Discretionary programs in IDEA, which fund personnel training, research, systematic change activities, parent training and information centers, technical assistance, and media and technology initiatives to assist children with disabilities, have evolved since the act's original passing to cover a variety of particular needs. Many of these needs continue to this day, while others have receded.

Current law authorizes nineteen funded and unfunded discretionary programs. This legislation consolidates these programs into four broad areas. The committee believes that by creating a refocused national program for discretionary programs, such programs will be more strategically able to assist States, and local communities, to maintain and improve their capacity to reach and serve infants, toddlers, and children with disabilities.

The act creates a new part D, National Activities to Improve Education of Children with Disabilities. Subpart 1 of part D authorizes new State Program Improvement Grants. This subpart 1 establishes a new system of grants to improve results for children with disabilities through systemic reform with an emphasis on personnel training. State educational agencies, in close cooperation with their "contractual partners," local educational agencies, and parents of children with and without disabilities, individuals with disabilities, the Governor, and other State and local agencies, organizations, and institutions concerned with the needs of and services for children with disabilities shall develop an improvement plan after identifying the State's needs in several areas; these include assessing children with disabilities and their performance, training and personnel needs, and evaluating system effectiveness. States that receive these competitive grants will be able to use funds to implement the improvement strategies they have proposed in their plan which will be based on the needs of the State's children with disabilities and the nature of the State's capacity and methods of serving these children.

The legislation requires that 75 percent of State Program Improvement Grant funds be used for personnel training. This reflected the committee's desire that subpart 1 grants be a primary means of supporting personnel training, complemented by an authorization for additional, but targeted, personnel training initiatives in subpart 2, chapter 1 of part D. The rationale for focusing personnel training funds at the State level through subpart 1, State Program Improvement Grants, is an attempt to improve results for children with disabilities through addressing personnel training needs of States, as identified and defined by a State, not by the Federal Government.

Under the current program, universities receive grants based on applications made to the Department of Education. These applications generally focus on pre-service training for special education teachers. In many States, the greatest need for training is for in-service training for general and special education teachers, and for pre-service training in addressing the special instructional needs of

children with disabilities, including their integration in regular education classes, for future general education personnel. The committee believes that, by targeting State Program Improvement Grant funds as it has, appropriate training for teachers addressing the learning needs of children with disabilities, especially general education teachers in early grades, will help reduce inappropriate referrals to special education of learning disabled children and improve results for children with disabilities served by both general and special educational personnel. Instead of learning from a teacher whose abilities cannot properly meet the child's particular needs, learning disabled children will have been taught in a manner that they can understand from teachers whose training permitted them to understand that child's learning style.

In part D, subpart 2, the committee authorizes Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information. The committee intends that the new Chapter 1 National Research and Innovation Activities Program lead to a new coordinated effort in special education research and grant activities. Section 661 in the bill contains the administrative provisions. In this section the Secretary of Education is provided with both direction and flexibility that the committee believes will facilitate the development of a comprehensive plan to guide the distribution of funds under subpart 2. Stakeholders will have direct input in developing the plan. As in current law, in the bill each major grant competition requires peer review, to promote the selection of high quality applicants for funding that will be responsive to the needs identified in a particular competition. The committee intends that the Secretary's planning process establish a new coordinated system of funding to reflect what the stakeholders collectively view as funding priorities.

The bill authorizes research and targeted training activities. The bill provides wide flexibility in terms of funding for research, distinguishing among funding for knowledge production, integration of research knowledge and practice, and the use of professional knowledge. The committee believes strongly that an organized, collective commitment to get validated research—best practice information—to the teacher in the classroom is essential. Thus, the committee anticipates that the substance and organization of these provisions pertaining to research will facilitate such an outcome.

The bill authorizes funding for targeted personnel preparation activities related to preparing personnel to serve children with low-incidence and high-incidence disabilities, leadership personnel, and projects of national significance. The focus of the latter projects will be to develop and demonstrate effective and efficient practices; to apply research findings in personnel preparation, demonstrate effective models for preparing personnel; to reduce shortages of personnel, and develop, evaluate, and disseminate model teaching standards; as well as to develop and disseminate models that prepare teachers with strategies, including behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others; to fund institutes for professional development, activities promoting the transfer of certification requirements across States; and selected other activities, including projects to improve the ability of general education person-

nel—teachers, principals, and administrators—to meet the needs of children with disabilities. The bill specifies that high-incidence personnel preparation activities, including those conducted by local educational agencies and other local entities, are to address improvement and reform of existing training programs and the incorporation of best-practices and research-based knowledge into these training programs.

The bill directs the Secretary to undertake a national assessment of the Nation's systems of providing services to infants, toddlers, and children with disabilities and their families. The Secretary is to prepare recommendations for improving these systems in a fashion that will be useful to the 107th Congress, as it considers the effectiveness of these amendments in improving services for children with disabilities and whether further changes are needed. In addition, the Secretary is authorized to conduct longitudinal studies and to provide technical assistance directly to local educational agencies.

The bill retains the authority, substantially unchanged from current law, to fund the Parent Training and Information Centers. The bill adds authority to fund local parent organizations, referred to in the bill as "community parent resource centers". The committee recognizes the substantial contribution that State Parent Training and Information Centers, and local parent organizations have made, in educating parents about the IDEA, and especially in responding to parents of diverse racial, cultural, and linguistic backgrounds. The committee anticipates that, by working in tandem, the state-level and community-based grantees will be able to reach even more parents, many of whom are isolated by geographic, social, language, cultural, or racial factors.

The bill retains the authority for the Secretary to fund Regional Resource Centers, and clearinghouses, and other programs to help State and local entities build capacity to serve infants, toddlers, and children with disabilities and their families. It also retains the Secretary's authority to fund systemic technical assistance to assist with the implementation of State program improvement grants, promoting change through multistate and regional frameworks that benefit State and local educational agencies, and the collection and dissemination to a wide range of stakeholder audiences.

The bill retains the authority of the Secretary to fund projects related to the development, demonstration, and use of technology. It also retains the authority to fund educational media services. The authority extends support for video description, open captioning, and closed captioning of television programs, videos, or educational materials. On October 1, 2001, such support will cover video description, open captioning and closed captioning of educational, news, and informational television, videos, or materials. By that point, the committee anticipates that the transition toward privately financed captioning of all broadcast television will be well underway, because of the publication of, and expected compliance with, the Federal Communication Commission's regulations on the subject in August 1997.

TITLE II—MISCELLANEOUS PROVISIONS

Title II repeals and extends provisions of the IDEA consistent with the amendments in title I of the bill. Title II also provides that most amendments to parts A and B will be effective on the date of enactment. It provides that part C and sections 612(a)(4), 612(a)(14), 612(a)(16), 614(d) (except for paragraph (6)), and 618 of part B will be effective on July 1, 1998. It provides that amendments to part D, the new discretionary programs, and section 617 of part B will take effect October 1, 1997 consistent with the start of the Federal fiscal year 1998.

Title II establishes that section 618 of IDEA as in effect on the day before enactment, and the provisions of parts A and B of IDEA relating to IEP's and the State's comprehensive system of personnel development, as so in effect, shall remain in effect until July 1, 1998. It provides that beginning on October 1, 1997, the Secretary of Education may use funds appropriated under part D of IDEA as in effect on the day prior to enactment to make continuation awards for projects that were funded under section 618 and parts C through G of IDEA as in effect on September 30, 1997. Part I, the Family Support Program, will be authorized through September 30, 1998 as part of IDEA.

VI. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 1997.

Hon. JAMES M. JEFFORDS,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 717, the Individuals with Disabilities Act Amendments of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Justin Latus who can be reached at 226–2820.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

S. 717—Individuals with Disabilities Education Act Amendments of 1997 as ordered reported by the Senate Committee on Labor and Human Resources on May 7, 1997

Summary: S. 717 would revise the Individuals with Disabilities Education Act (IDEA) and would reauthorize funding for many of the programs that fall under the act. The purposes of S. 717 are to ensure that children with disabilities receive a free appropriate public education that is designed to meet their needs and prepare them for employment, to assist states and localities in providing education for children with disabilities, and to assess the effectiveness of efforts to educate children with disabilities.

The bill would give states the option to expand the definition of developmentally disabled children to include children aged 6 to 9,

and in doing so would increase authorizations of appropriations for the permanently authorized general grants to states program by about $200 million a year. S. 717 would reduce authorizations of appropriations for the permanently authorized preschool grant program by $400 million in 1998.

S. 717 would also reauthorize several programs that have expired, including the infants and toddlers program and the special purpose funds. The bill would reauthorize the special purpose funds and also consolidate fourteen separate programs that received an appropriation in 1997 into five new programs. These reauthorizations total $700 million to $800 million a year.

This cost estimate describes what S. 717 would authorize for spending on programs under the Individuals With Disabilities Education Act. Since all IDEA spending is discretionary, however, the amount that will actually be spent on this program will be determined in the annual appropriations process. For example, although total authorizations of appropriations under S. 717 in fiscal year 1998 are $16 billion, the program was funded at $4 billion in fiscal year 1997.

The provisions of S. 717 are excluded from consideration under the Unfunded Mandates Reform Act because they would "establish or enforce statutory rights that prohibit discrimination on the basis of * * * handicap, or disability."

Estimated cost to the Federal Government: The estimated budgetary impact of S. 717 is shown in the following tables.

TABLE 1. ESTIMATED BUDGETARY IMPACT OF S. 717

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
WITH ADJUSTMENTS FOR INFLATION						
Authorizations of appropriations under current law:						
Estimated authorization	4,036	15,927	16,664	17,424	18,224	19,064
Estimated outlays	3,320	4,988	12,394	15,924	17,239	18,030
Proposed changes:						
Estimated authorization	0	523	952	982	1,013	1,045
Estimated outlays	0	52	409	800	955	1,005
Authorizations of appropriations under S. 717:						
Estimated authorization	4,036	16,449	17,616	18,406	19,237	20,109
Estimated outlays	3,320	5,040	12,803	16,724	18,194	19,035
WITHOUT ADJUSTMENTS FOR INFLATION						
Authorizations of appropriations under current law:						
Estimated authorization	4,036	15,927	16,664	17,424	18,224	19,064
Estimated outlays	3,320	4,988	12,394	15,924	17,239	18,030
Proposed changes:						
Estimated authorization	0	523	933	943	953	964
Estimated outlays	0	52	407	784	920	951
Authorizations of appropriations under S. 717:						
Estimated authorization	4,036	16,449	17,596	18,367	19,177	20,029
Estimated outlays	3,320	5,040	12,801	16,709	18,159	18,981

Notes: The 1997 levels are the amounts appropriated. Components may not sum to totals because of rounding.

The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

TABLE 2. ESTIMATED BUDGETARY IMPACT OF S. 717 BY PART, WITH ADJUSTMENTS FOR INFLATION

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
Part B—General grants:						
Estimated authorization	0	204	214	224	234	245
Estimated outlays	0	20	144	201	221	232
Part B—Preschool grants:						
Estimated authorization	0	−400	0	0	0	0
Estimated outlays	0	−40	−240	−100	−20	0
Part C:						
Estimated authorization	0	400	411	422	433	445
Estimated outlays	0	40	281	389	419	430
Part D—Subpart 1:						
Estimated authorization	0	104	107	110	113	116
Estimated outlays	0	10	73	101	109	112
Part D—Subpart 2, section 672:						
Estimated authorization	0	110	113	116	119	122
Estimated outlays	0	11	77	107	115	118
Part D—Subpart 2, section 673:						
Estimated authorization	0	50	51	53	54	56
Estimated outlays	0	5	35	49	52	54
Part D—Subpart 2, section 686:						
Estimated authorization	0	25	26	26	27	28
Estimated outlays	0	3	18	24	26	27
Part D—Subpart 2, section 687:						
Estimated authorization	0	30	31	32	32	33
Estimated outlays	0	3	21	29	31	32
Part D—Subtotal:						
Estimated authorization	0	319	328	336	345	355
Estimated outlays	0	32	224	310	334	343
Total:						
Estimated authorization	0	523	952	982	1,013	1,045
Estimated outlays	0	52	409	800	955	1,005

Notes: The 1997 levels are the amounts appropriated. Components may not sum to totals because of rounding.

TABLE 3. ESTIMATED BUDGETARY IMPACT OF S. 717 BY PART, WITHOUT ADJUSTMENTS FOR INFLATION

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
Part B—General grants:						
Estimated authorization	0	204	214	224	234	245
Estimated outlays	0	20	144	201	221	232
Part B—Preschool grants:						
Estimated authorization	0	−400	0	0	0	0
Estimated outlays	0	−40	−240	−100	−20	0
Part C:						
Estimated authorization	0	400	400	400	400	400
Estimated outlays	0	40	280	380	400	400
Part D—Subpart 1:						
Estimated authorization	0	104	104	104	104	104
Estimated outlays	0	10	73	99	104	104
Part D—Subpart 2, section 672:						
Estimated authorization	0	110	110	110	110	110
Estimated outlays	0	11	77	105	110	110
Part D—Subpart 2, section 673:						
Estimated authorization	0	50	50	50	50	50
Estimated outlays	0	5	35	48	50	50
Part D—Subpart 2, section 686:						
Estimated authorization	0	25	25	25	25	25
Estimated outlays	0	3	18	24	25	25
Part D—Subpart 2, section 687:						
Estimated authorization	0	30	30	30	30	30
Estimated outlays	0	3	21	29	30	30

TABLE 3. ESTIMATED BUDGETARY IMPACT OF S. 717 BY PART, WITHOUT ADJUSTMENTS FOR INFLATION—Continued

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
Part D—Subtotal						
Estimated authorization	0	319	319	319	319	319
Estimated outlays	0	32	223	303	319	319
Total						
Estimated authorization	0	523	933	943	953	964
Estimated outlays	0	52	407	784	920	951

Notes: The 1997 levels are the amounts appropriated. Components may not sum to totals because of rounding.

Basis of estimate: The spending that would occur under S. 717 would be subject to the availability of appropriated funds. Estimated outlays are based on the historical spending of programs authorized by IDEA. Parts A, B, and C would be effective on July 1, 1998, and Part D would be effective on October 1, 1997.

Part B

S. 717 would revise Part B of IDEA, including the program of general grants to states. Current law permanently authorizes such sums as may be necessary for this program and contains a formula for determining how much states would get if the program is fully funded—the number of children with a disability times 40 percent of the average per pupil expenditure. S. 717 would give states the option to expand the definition of children with disabilities to include children aged 6 to 9 who are determined to be developmentally delayed (i.e., experiencing delays in physical, cognitive, communication, social, emotional, or adaptive development). This expansion of eligibility by about 10 percent would increase the authorizations of appropriations by about $200 million in 1998 and $1.1 billion over the 1998–2002 period, including adjustments for increases in the number of disabled children and costs per pupil.

S. 717 would also revise the section of Part B of IDEA of that deals with preschool grants to states. Current law permanently authorizes such sums as may be necessary to provide funding for grants for preschool children with disabilities, with a maximum grant for each child capped at $1,500. Authorizations of appropriations for 1998 under current law are estimated to be about $900 million. S. 717 would authorize appropriations for preschool children with disabilities of $500 million in fiscal year 1998 and such sums as necessary in subsequent years. The bill would remove the limit on the grant amount per child. CBO estimates that S. 717 would decrease authorizations of appropriations by $400 million in 1998. The authorization level represents an increase, however, over the fiscal year 1997 appropriation for grants for preschool children of $360 million.

Part C

Part C of S. 717 would authorize $400 million in 1998 and such sums as necessary in fiscal years 1999 through 2002 for spending on infants and toddlers with disabilities. Part C would be similar to part H of current law, which covers infants and toddlers with disabilities and which is authorized through fiscal year 1997. Budget authority is estimated to increase by $400 million in fiscal year

1998 and $2.1 billion over the 1998–2002 period, with adjustments for inflation. Without adjustments for inflation, the total would be $2.0 billion.

Part D

Part D of S. 717 would authorize such sums as necessary for grants to fund activities to improve the education of children with disabilities for fiscal years 1998 through 2002. The fourteen current law special purpose funds that this part would replace are not authorized beyond 1997.

Subpart 1.—Subpart 1 of Part D would authorize appropriations for state program improvement grants for children with disabilities. This program has no equivalent under current law. The program would give money to states to improve their systems of delivery of services to children with disabilities. States would be required to spend a certain share of the grants they receive on training and development of personnel who work with children with disabilities. This subpart authorizes a maximum grant of $2 million per state for each of the fifty states, the District of Columbia, and Puerto Rico. CBO uses this maximum amount to estimate total authorizations of appropriations for fiscal year 1998 of $104 million. Authorizations of appropriations would total $550 million over the 1998–2002 period with adjustments for inflation and $520 million without adjustments for inflation.

Subpart 2—Section 672 authorizes such sums as necessary for "research and innovation to improve services and results for children with disabilities" for fiscal years 1998 through 2002. CBO assumes this section would authorize spending on activities covered under such current programs as innovation and development, deaf-blindness, serious emotional disturbances, severe disabilities, early-childhood education, secondary and transitional services, post-secondary education, and special studies. Using the amounts appropriated for these activities in fiscal year 1997 as a benchmark, CBO estimates that section 672 would authorize $110 million in fiscal year 1998, or $580 million over fiscal years 1998–2002, with adjustments for inflation. Authorizations of appropriations for the same period without adjustments for inflation would total $550 million.

Section 673 authorizes such sums as necessary for activities related to the professional development of personnel who work with children with disabilities. Current authorizations of appropriations for these activities do not extend beyond 1997. Personnel development activities under this subpart would be implemented by the Secretary of Education, as contrasted with the personnel development activities in subpart 1 which would be initiated by states. Spending on the current personnel development program (conducted by the Secretary of Education) was about $100 million in 1997. CBO assumes that under S. 717, some personnel development spending would be shifted to Subpart 1 and that authorizations of appropriations under Subpart 2 would be only $50 million in fiscal year 1998, or about $260 million for fiscal years 1998–2002 when inflation is considered. The total for 1998–2002 without adjustments for inflation would be $250 million.

Section 686 would authorize appropriations for parent training and information centers and community parent resource centers. Current programs that would be authorized under this section include parent training, clearinghouses, and regional resource centers. Using the 1997 appropriations for these programs as a guide, CBO estimates that this section would increase authorizations of appropriations by $25 million in fiscal year 1998 and $132 million over the 1998–2002 period, with adjustments for inflation. The total over the same period without adjustments for inflation would be $125 million.

Section 687 would authorize such sums as necessary for activities related to media services and technology development, demonstration, and utilization. CBO estimates that this section would increase authorizations by $30 million in 1998. The total increase in authorizations over the 1998–2002 period would be $158 million with adjustments for inflation, or $150 million without adjustments for inflation. CBO used what was appropriated for media and captioning services and technology applications under the current IDEA law for fiscal year 1997 as its basis for estimating these amounts.

Repeals

S. 717 repeals Parts C, E, F, G, H, and I of current law. Authorizations of appropriations for Parts C, E, F, G, and H have expired, so repealing these parts would have no budgetary impact. Part I is authorized at such sums as may be necessary through fiscal year 1998 under the General Education Provisions Act (GEPA). (GEPA provides an automatic one-year extension of authorizations for all programs in the Department of Education.) Since this part (family support) has never received an appropriation, the estimate includes no savings from its repeal.

Pay-as-you-go considerations: None.

Interogovernmental and private-sector impact: Section 4 of the Unfunded Mandates Reform Act excludes from consideration under that Act any bill that would "establish or enforce statutory rights that prohibit discrimination on the basis of * * * handicap, or disability." S. 717 fits within that exclusion because it would ensure that the rights of children with disabilities are protected in the public education system.

Estimate prepared by: Federal cost: Justin Latus; Impact on State, local and tribal governments: Marc Nicole; Impact on the private sector: Kathryn Rarick.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

VII. REGULATORY IMPACT STATEMENT

The committee has determined that there will be no increase in the regulatory burden imposed by this bill.

VIII. APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

S. 717 improves State grant programs and reauthorizes related support programs that assist in providing a free appropriate public education to children with disabilities, and as such has no application to the legislative branch.

IX. SECTION-BY-SECTION ANALYSIS

Section 1 of the bill permits this title to be cited as the "Individuals with Disabilities Education Act Amendments of 1997.

Section 101 of the bill amends the current provisions of the Individuals with Disabilities Education Act as follows.

Part A

Section 601 contains the short title of the Act, the Table of Contents, the findings, and the purposes.

Section 602 defines the key terms used in this title, including: Assistive Technology Device, Assistive Technology Service, Child with a Disability, Educational Service Agency, Elementary School, Equipment, Excess Costs, Free Appropriate Public Education, Indian, Indian Tribe, Individualized Education Program, Individualized Family Service Plan, Infant or Toddler with a Disability, Institution of Higher Education, Local Educational Agency, Native Language, Nonprofit, Outlying Areas, Parent, Parent Organization, Parent Information and Training Center, Related Services, Secondary School, Secretary, Special Education, Specific Learning Disability, State, State Educational Agency, Supplementary Aids and Services, and Transition Services.

Section 603 authorizes the Office of Special Education Programs headed by a Director who is selected by the Secretary and also authorizes the Secretary to accept the work of volunteers in carrying out the Act.

Section 604 denies a State immunity under the Eleventh Amendment to the Constitution of the United States for violating this Act. This section also provides for remedies for violation and for an effective date for the provision with respect to violations.

Section 605 authorizes the acquisition of equipment and construction of necessary facilities, and provides that any construction must meet specified accessibility standards.

Section 606 directs each recipient of funds under this Act to make positive efforts to employ individuals with disabilities in programs assisted under this Act.

Section 607 includes requirements for prescribing regulations, and for issuing policy letters by the Department of Education.

Part B

Section 611(a) authorizes the Secretary to provide grants to the States and amounts to the Secretary of the Interior to provide special education and related services to children with disabilities.

Section 611(b) describes the allotment formula for the outlying areas.

Section 611(c) specifies the proportion of funds to be provided to the Secretary of the Interior.

Section 611(d) includes the allotment formula for making part B grants to States.

Section 611(e) specifies the States use of part B funds, including the use of funds for State administration and other State-level activities, and subgrants to LEAs and former Chapter 1 State agencies.

Section 611(f) addresses the use of funds provided to the Secretary of the Interior for the education of children with disabilities living on reservations or enrolled in elementary or secondary schools for Indian children operated or funded by the Secretary of the Interior.

Section 611(g) authorizes the appropriation of such sums as may be necessary for the purpose of carrying out the provision of special education and related services to children with disability ages 5 through 21 years.

Section 612(a) describes the policies and procedures that a State must have in effect to be eligible for receipt of funds under part B of the Act, including policies and procedures relating to: Free Appropriate Public Education; Child Find; Individualized Program, Least Restrictive Environment; Procedural Safeguards; Evaluation; Confidentiality; Transition from Part C to Preschool Programs; Children in Private Schools; State Education Agency Responsible for General Supervision (including an exception relating to disabled children who are convicted as adults under State Law and incarcerated in adult prisons); Obligations Relating to and Methods for Ensuring Services; State Educational Agency Eligibility; Comprehensive System of Personnel Development; Personnel Standards; Performance Goals and Indicators; Participation in Assessments; Supplementation of State, Local and other Federal Funds; Maintenance of State Financial Support; Public Participation; State Advisory Panel; and Supervision and Expulsion Rates.

Section 612(b) lists the additional requirements under section 613(a) that a State Education Agency must meet if it provides a free appropriate public education or direct services to children with disabilities.

Section 612(c) includes conditions under which States are required to submit amended policies and procedures to the Secretary, and the Secretary's responsibilities under this section.

Section 612(d) describes what actions the Secretary must take in approving a State's eligibility, and before making a final determination that a State is not eligible.

Section 612(e) provides that nothing in the IDEA permits a State to reduce medical and other assistance available, or to alter eligibility, under Titles V and XIX of the Social Security Act (Maternal and Child Health Services and Medicaid) with respect to the provision of a free appropriate public education for children with disabilities within the State.

Section 612(f) directs the Secretary to arrange for the provision of special education to children with disabilities in private schools if, in 1983, a State was prohibited by State law from providing that education.

Section 613(a) sets out the local eligibility requirements under part B. The section provides that to be eligible for any fiscal year, an LEA must demonstrate to the satisfaction of the SEA that its policies, procedures, and programs are consistent with the State policies and procedures described under section 612; and that the LEA uses its part B funds in accordance with the specified requirements of this section; meets the personnel development requirements; and provides the SEA with information to enable that agency to carry out its duties under this part. The section permits LEAs

to use the part B funds for various specified purposes. The section also addresses the treatment of charter schools under part B and the disabled children that they serve.

Section 613(b) includes conditions under which LEAs are required to submit amended policies and procedures to the SEA, and the SEA's responsibilities under this section.

Section 613(c) provides that if the SEA determines that an LEA or a State agency is not eligible under this section, it must notify that agency of its determination and provide the agency with reasonable notice and an opportunity for a hearing.

Section 613(d) provides that if an eligible LEA or State agency is failing to comply with any requirement under section 613(a), the SEA shall not make any further payments to that agency until it comes into compliance.

Section 613(e) sets out conditions under which an SEA may require an LEA to establish its eligibility jointly with another LEA, and describes the conditions under which an educational service agency and a charter school would be exempted from this section.

Section 613(f) permits an LEA to use up to five percent of its annual part B allotment to develop and implement a coordinated services system.

Section 613(g) authorizes each LEA to use its part B funds to permit a public school within the jurisdiction of an LEA to design, implement, and evaluate a school based improvement plan.

Section 613(h) requires the SEA to use the payments that otherwise would have been available to an LEA or State agency to provide special education and related services directly to children with disabilities for whom the agency is responsible, if the SEA determines the existence of one or more specified situations.

Section 613(i) requires any State agency that desires to receive a subgrant for any fiscal year under part B to demonstrate to the satisfaction of the SEA that the agency meets the conditions described in the section.

Section 614(a) sets out requirements relating to initial evaluations, parental consent and refusal of consent, and reevaluations.

Section 614(b) includes requirements for procedures relating to providing notice to parents about evaluations, and conducting evaluations.

Section 614(c) includes requirements relating to determining a child's eligibility under part B; reviewing existing evaluation data; obtaining parental consent for revaluations, and actions to take if additional data are not needed.

Section 614(d) includes definitions of "IEP" and "IEP Team"; requires that an IEP be in effect at the beginning of each school year for each child with a disability, and provides that, for a child aged three, four, or five, an IFSP developed under part C could serve as the child's IEP; requires that each IEP be developed in a meeting by the IEP team, and lists specified areas that must be considered in developing a child's IEP; and requires LEAs to ensure that the IEP team reviews each IEP periodically, but not less than annually, and revises the IEP, as appropriate. The section also requires LEAs to reconvene the IEP team to identify alternative strategies to meet the transition objectives for a student if a participating agency, other than the LEA, fails to provide the transition services

described in the IEP. Further, the section includes provisions relating to children with disabilities in adult prisons.

Section 614(e) provides that nothing in the section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component.

Section 614(f) requires that each SEA or LEA ensure that the parents of each disabled child are members of any group that makes decisions on the educational placement of their child.

Section 615(a) provides that any SEA, State agency, or LEA that receives part B funds must establish and maintain procedures to assure that children with disabilities and their families are guaranteed procedural safeguards with respect to the provision of a free appropriate public education.

Section 615(b) requires that procedural safeguards include: parental opportunity to examine all relevant records on their child; procedures to protect the rights of the child whenever the parents are not known, can't be located after reasonable efforts, or the child is a State ward, including appointing a surrogate parent for the child; written prior notice to the parents, provided in their native language, unless it is clearly not feasible to do so; an opportunity for mediation and to present complaints; notice by the parents or their attorney in the complaint, including information about the child, the problem, and a possible solution known and available at the time; and development of a model by the SEA to assist parents in providing notice.

Section 615(c) describes the content of the prior written notice provided by the agency.

Section 615(d) describes the content and timing of the procedural safeguards notice given to the parents.

Section 615(e) requires SEAs or LEAs to make mediation available to parents, but provides that it is voluntary for both parties to determines whether they want to participate, and is not used to deny or delay a parent's right to a due process hearing under section 615, or to deny any other rights afforded under part B. The section authorizes LEAs to require parents, before requesting a due process hearing, to attend a meeting at which representatives from Parent Training and Information Centers or other alternative dispute resolution groups would explain the benefits of mediation and encourage its use.

Section 615(f) requires that whenever a complaint has been received, the parents involved in the complaint must have an opportunity for an impartial due process conducted by the SEA or LEA, and also outlines the requirements for the hearing process.

Section 615(g) provides that any party aggrieved by a due process hearing conducted by the LEA may appeal the decision to the SEA.

Section 615(h) lists the procedural safeguards rights that are available to any party to a due process hearing or an appeal, including the right to a written, or, at the option of the parents, electronic verbatim record of the hearing and electronic findings of fact and decisions.

Section 615(i) provides that any party aggrieved by the findings and decision in this section, or in section 615(g), has the right to

bring a civil action in a State court or in a District Court of the United States without regard to the amount in question. This section permits the award of attorneys' fees and lists the considerations for reducing attorney's fees.

Section 615(j) provides that, except as provided in 615(k)(7), the child must remain in the current educational setting while any proceedings conducted under this section are pending.

Section 615(k) provides two exceptions to the pendency provision under section 615(j): first, with respect to a situation in which a disabled child carries a weapon to school or a school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function; and second, with respect to a situation in which a child's actions are substantially likely to result in injury to the child or others. as determined by a hearing officer. The section sets out conditions and procedures relating to placing a child in an alternative educational setting, conducting a manifestation determination, required actions by the LEA when the child's behavior was not a manifestation of the child's disability, and the required hearing procedures and pendency provisions. The section also sets out protections for children not yet eligible for special education; includes a provision relating to referral to and action by law enforcement and judicial authorities; and includes definitions of "controlled substance", "illegal drug" and "weapon".

Section 615(l) maintains the rights available under the Constitution, the Americans with Disabilities Act, title V of the Rehabilitation Act and other Federal laws.

Section 615(m) requires the State to provide for transfer of rights from the parent to the child with a disability when the child reaches the age of majority under State law, unless the child has been found to be unable to provide informed consent to educational decisions.

Section 616 allows the Secretary to withhold payments to the State, after reasonable notice and an opportunity for a hearing, for substantial failure to comply with any provision or condition under this part. The section also describes the nature of the withholding and availability and process of a judicial review.

Section 617 describes the responsibilities of the Secretary under part B, including: arranging for the provision of technical assistance to the States; the issuance of rules and regulations to the extent necessary to ensure compliance with part B; confidentiality; and the hiring of personnel to conduct data collection and evaluation activities.

Section 618 describes the program information that each State receiving Part B funds and the Secretary of the Interior must provide to the Secretary each year, and permits States and the Secretary of the Interior to obtain the data through sampling. The section also requires each State to collect and examine data each year to determine if significant disproportionality based on race is occurring in the identification and placement of children with disabilities, and provides that if a situation is identified, the State must review and revise, if necessary, it policies, practices, and procedures.

Section 619(a) directs the Secretary to make grants to assist States to provide special education and related services, in accordance with Part B, to children with disabilities aged three through five and, at the State's discretion, to 2-year-old children with disabilities who will turn three during the school year.

Section 619(b) provides that a State is eligible for a grant under section 619 if it has established its eligibility under section 612 and it makes a free appropriate public education available to all children with disabilities, aged three through five, residing in its jurisdiction.

Section 619(c) includes the allotment formula for the Preschool Grants program.

Section 619(d) describes the general amount of Preschool Grant funds that may be retained by the State.

Section 619(e) specifies the use of Preschool Grant funds for State administration.

Section 619(f) specifies the use of Preschool Grant funds for other State-level activities.

Section 619(g) provides for subgrants to LEAs.

Section 619(h) provides that part C of this Act does not apply to any child with a disability receiving a free appropriate public education in accordance with part B, with Preschool Grant funds.

Section 619(i) includes a special definition of "State" for purposes of allocating funds under the Preschool Grants program.

Section 619(j) exempts the outlying areas from the provisions of section 501 of Public law 95–534.

Section 619(k) authorizes an appropriation of $500 million for FY 1988 and such sums as may be necessary for each subsequent fiscal year.

Part C

Section 631(a) lists the Congressional findings relating to Part C.

Section 631(b) outlines the policy of the United States to provide financial assistance to enhance the State's capacity to provide quality early intervention services and expand and improve existing early intervention services.

Section 632 defines the key terms used in this part, including "at-risk infant or toddler", "council", "developmental delay", "early intervention services", and "infant or toddler with a disability".

Section 633 authorizes the Secretary to make grants to the States to assist them in implementing and maintaining a statewide system of early intervention services for infants and toddlers with disabilities and their families.

Section 634 establishes the criteria each State must meet to be eligible for a grant under this part including: adoption of a policy that appropriate early intervention services are available to all infants and toddlers with disabilities and their families in the State (including Indian infants and toddlers with disabilities and their families living on an Indian reservation within the State); and provision of a statewide system of early intervention services which meets the requirements of section 635.

Section 635(a) establishes the minimum components for a statewide system of early intervention services including: a definition of developmental delay, a timely, comprehensive, multidisciplinary

evaluation of each infant or toddler; an Individualized Family Service Plan in accordance with section 636; a comprehensive child find system consistent with Part B; a public awareness program; a central director; a comprehensive system of personnel development; policies and procedures relating to personnel standards; a single line of responsibility for the administration and supervision of the statewide program, a policy pertaining to contracting with service providers; a procedure for reimbursement of funds; procedural safeguards; a system for compiling data; a State interagency coordinating council that meets the requirements of section 641; and a policy for ensuring that early intervention services are provided in natural environments to the maximum extent appropriate.

Section 635(b) allows the State to make ongoing, good faith efforts to recruit and hire appropriately and adequately trained personnel and, where there is a shortage of such personnel, to use the most qualified individuals available who are making satisfactory progress toward completing course work necessary to meet State certification standards.

Section 636(a) requires the statewide system to provide for each infant or toddler with a disability, and each family, to receive: a multidisciplinary assessment; a family-directed assessment; and a written individualized family service plan (IFSP) developed by a multidisciplinary team, including the parents.

Section 636(b) requires the IFSP be evaluated once a year and requires that every six months the family receive a review of the plan.

Section 636(c) requires the IFSP be developed within a reasonable time after the assessment, and provides that, with parental consent, early intervention services may commence prior to the completion of the assessment.

Section 636(d) directs that the individualized family service plan be in writing and details what it must contain.

Section 636(e) requires parents to provide informed written consent before implementation of the IFSP, and permits the delivery of only those services for which consent has been given.

Section 637(a) requires that each State desiring to receive a grant under this part submit an application to the Secretary at the time and in the manner required by the Secretary, and describes the information required to be in the application.

Section 637(b) lists the assurances that the State must include in its application to the Secretary.

Section 637(c) provides that the Secretary may not disapprove a State's application without first determining, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

Section 637(d) provides that if a State already has on file with the Secretary policies and procedures that demonstrate that it meets any requirement of part C, the Secretary shall treat the State as meeting that requirement for purposes of receiving a grant under part C.

Section 637(e) provides that an application submitted by a State in accordance with section 637 shall remain in effect until the State submits to the Secretary such modifications it determines necessary.

Section 638 lists the allowable use of funds under part C, including providing greater flexibility in addressing the needs of at risk infants and toddlers in those States not currently serving such children.

Section 639(a) details the minimum procedural safeguards a State shall have in place.

Section 639(b) provides that during the pendency of any proceeding or action involving a complaint by the parents, the infant or toddler shall continue to receive the early intervention services currently being delivered, or if applying for initial services, shall receive the services not in dispute.

Section 640(a) provides that funds under part C may not be used to pay for services which would have been paid for by another source, including any medical program administered by the Department of Defense, but for the enactment of part C, except to prevent a delay in the provision of early intervention services pending reimbursement from the agency which has ultimate responsibility for the payment.

Section 640(b) prohibits the State from reducing medical or other assistance available or from altering eligibility under title V of the Social Security Act (relating to maternal and child health) or to title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

Section 641(a) requires each State wishing to receive funds under this part to establish an interagency coordinating council with the membership outlined in this section appointed by the Governor.

Section 641(b) prescribes the composition of the Council, including: 20% parent members; 20% service provider members; and at least one member representing the State legislature, personnel preparation, each of the State agencies providing or paying for early intervention services; and other members selected by the Governor.

Section 641(c) requires the council to meet at least quarterly, and to conduct meetings that have been publicly announced and are open and accessible to the general public.

Section 641(d) allows the council, subject to the approval of the Governor, to use funds under this part to conduct hearings and forums, reimburse council members for necessary expenses related to attending meetings, hire staff, and for other purposes.

Section 641(e) describes the functions of the council.

Section 641(f) prohibits any member of the council from voting on any matter which would give the appearance of a conflict of interest.

Section 642 provides that sections 616, 617, 618, and 620 shall, to the extent not inconsistent with part C, apply to the program authorized under this part.

Section 643(a) allows the Secretary to reserve up to one percent of the funds from the appropriation for payment to the outlying areas, and exempts those funds from the provisions of P.L. 95–134.

Section 643(b) directs the Secretary to make payments of 1.25 percent of the amount available to the States to the Secretary of the Interior for distribution to Indian tribes and includes the methods of allocation, allowable uses of funds, and reporting requirements.

Section 643(c) describes the manner in which the part C funds will be distributed to the States.

Section 643(d) allows the Secretary to reallot any funds refused by a State to the remaining States.

Section 644(a) requires the Secretary to establish a Federal Interagency Coordinating Council to minimize duplication of programs and activities across Federal, State, and local agencies, ensure the effective coordination of Federal early intervention and preschool programs across Federal agencies, and for other coordinative purposes.

Section 644(b) prescribes the composition of the Council.

Section 644(c) requires the council to meet at least quarterly, and to conduct meetings that have been publicly announced and are open and accessible to the general public.

Section 644(d) describes the functions of the Council.

Section 644(e) prohibits any member of the Council from voting on any matter which would give the appearance of a conflict of interest under Federal law.

Section 644(f) exempts the Federal Advisory Committee Act (5 U.S.C. App.) from applying to the establishment or operation of the Council.

Section 645 authorizes an appropriation of $400,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

Part D—Subpart 1

Section 651(a) sets out congressional findings in support of a new program of grants to States to support the development and implementation of plans to improve their systems for educating children with disabilities. The program would be authorized by subpart 1 of a new part C of the IDEA.

Section 651(b) would provide that the purpose of the new program is to assist SEAs and their partners in the State in reforming and improving their systems for providing educational, early intervention, and transitional services to improve results for children with disabilities.

Section 622(a) permits an SEA to apply for a grant under subpart 1 for a period of not less than one year and not more than five years.

Section 652(b) requires an SEA that wants to apply for a grant to establish a partnership with LEAs and other State agencies involved in, or concerned with, the education of children with disabilities, and to work in partnership with other organizations and individuals involved in and concerned with the education of children with disabilities. The SEA must involve identified individuals and organizations in the partnership, and may include others at its discretion.

Section 653 describes the material (including a comprehensive needs assessment and a description of the strategies the State will use to meet those needs) that must be included in a State's application under Subpart 1, the process by which the Secretary makes competitive awards to States, and the obligation of States receiving grants to submit regular performance reports to the Secretary.

Section 654 describes the permissible uses of a State Improvement grant, and requires each State to use a substantial part of its grant to ensure that there are sufficient personnel who have the skills and knowledge necessary to meet the needs of children with disabilities in the State.

Section 655 establishes minimum grant amounts for States whose applications are approved, allows the Secretary to increase the minimum amounts in later years to account for inflation, and lists the factors the Secretary considers in setting the amount of individual grants.

Section 656 authorizes the appropriation of such sums as may be necessary to carry out Subpart 1 for each of the fiscal years 1998 through 2002.

Part D—Subpart 2

Section 661(a), which is similar to current section 610(a), requires the Secretary to develop and implement a comprehensive plan for activities under Subpart 2 of Part D, in order to assist States and LEAs in providing educational, related, and early intervention services to children with disabilities under Parts B and C of the IDEA. In developing that plan, the Secretary is required to consult with individuals with disabilities; parents of children with disabilities; appropriate professionals; and representatives of SEAs, LEAs, private schools, institutions of higher education, other Federal agencies, the National Council on Disabilities, and national organizations with an interest in, and expertise in, providing services to children with disabilities and their families.

Section 661(b)(1) replaces the individual statements of eligibility that are now scattered throughout the discretionary program authorities with a single comprehensive statement that, except as otherwise provided, those eligible to apply for awards under Subpart 2 are: (1) SEAs; (2) LEAs; (3) institutions of higher education; (4) other public agencies; (5) private nonprofit organizations; (6) Indian tribes and tribal organizations; and (7) when the Secretary finds it appropriate in light of the purposes of the particular competition, for-profit organizations.

Section 661(b)(2) permits the Secretary to limit individual competitions to one or more categories of eligible entities listed above.

Section 661(c) affords the Secretary some flexibility in using funds under subpart 2 by allowing the Secretary to use up to 20 percent of the funds available under chapter 1 or chapter 2 for activities authorized by the other chapter, or for any combination of activities consistent with the purposes of either or both chapters.

Section 661(d), relating to special populations, is based on current section 610(b) and (j). Paragraph (1) directs the Secretary, as appropriate, in making awards under subpart 2, to require applicants to demonstrate how they will address the needs of children with disabilities from minority backgrounds.

Section 661(d)(2)(A) further directs the Secretary, notwithstanding any other provision of the IDEA, to ensure that at least one percent of the total amount of funds appropriated for Subpart 2 is used to provide outreach and technical assistance to Historically Black Colleges and Universities (HBCUs), and to institutions of higher education with minority enrollments of at least 25 percent,

to promote their participation in activities under the subpart 2 programs; and to enable those HBCUs and institutions to assist others in improving educational results for children with disabilities. Paragraph (3)(B) would allow the Secretary to reserve funds appropriated under parts D through G (and, for fiscal year 1996, under parts C through G) to meet that requirement. These provisions are analogous to current section 610(j)(2)(C)(iii).

Section 661(e) enables the Secretary to give priority to particular types of projects without requiring public comment.

Section 661(f)(1) directs the Secretary to require that applicants for, and recipients of, awards under subpart 2 involve individuals with disabilities and parents of individuals with disabilities in planning, implementing, and evaluating projects, and, where appropriate, determine their projects' potential for replication and widespread adoption. Paragraph (2) permits the Secretary to require that those applicants and recipients share in the cost of projects; prepare their findings and products in formats useful for specific audiences; disseminate their findings and products; and collaborate with other recipients. These two paragraphs replace current section 610(g).

Section 661(g), which is similar to current section 601(h), provides for peer review of applications under subpart 2 for more than $75,000. (The current threshold is $60,000.) Separate peer-review provisions for State Improvement Plans under the new Subpart 1 apply to that program.

Section 661(h) allows the Secretary to use funds appropriated to carry out subpart 2 to evaluate activities carried out under that subpart.

Section 661(i)(1) ensures that the needs of children with low-incidence disabilities continue to be met during the implementation of the new, more flexible authorities by guaranteeing that, however the Secretary implements those authorities, certain absolute dollar amounts continue to be spent in the following specified areas: (1) $12,832,000 to address the educational, related services, transitional, and early intervention needs to children with deaf-blindness; (2) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness; and (3) $4,000,000 to address the special educational, related services, and transitional needs of children with emotional disturbance and those who are at risk of developing an emotional disturbance. Paragraph (2) provides for a proportionate reduction of these amounts if the total amount appropriated for any fiscal year for Subpart 2 falls below $130 million.

Chapter 1

Section 671(a) sets out congressional findings in support of the chapter 1 program. Section 671(b) provides that the purpose of chapter 1 is to provide Federal funding for certain coordinated research, demonstration projects, outreach, and personnel-preparation activities that are linked with, and promote, systemic change; and that improve early intervention, educational, and transitional results for children with disabilities.

Section 672(a) directs the Secretary to make competitive awards to eligible entities to produce and advance the use of knowledge for six specified purposes.

Section 672(b) directs the Secretary to support activities, consistent with the objectives described in section 672(a), that lead to the production of new knowledge, and lists a variety of specific activities that may be carried out.

Section 672(c) directs the Secretary to support activities, consistent with the objectives described in section 672(a), that integrate research and practice, including activities that support State systemic-change and local capacity-building and improvement efforts, and lists examples of activities that may be carried out under this subsection.

Section 672(d) directs the Secretary to support activities, consistent with the objectives described in section 672(a), that improve the use of professional knowledge, including activities that support State systemic-change and local capacity-building and improvement efforts, and lists examples of activities that may be carried out under this subsection.

Section 672(e) requires the Secretary, in carrying out section 632, to ensure that there is an appropriate balance among knowledge production, integration of research and practice, and use of professional knowledge; and across all age ranges of children with disabilities.

Section 672(f) requires an eligible entity that wishes to receive an award under section 672 to submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

Section 672(g) authorizes the appropriation of such sums as may be necessary to carry out section 672 for each of the fiscal years 1998 through 2002.

Section 673(a) directs the Secretary to make competitive awards to eligible entities to help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education to work with children with disabilities; and to ensure that those personnel have the skills and knowledge reflecting successful practices determined through research and practice that are needed to serve those children.

Section 673(b) directs the Secretary, in carrying out section 673, to support activities, consistent with the objectives described in section 673(a), that benefit children with low-incidence disabilities; identifies examples of activities that may be carried out under this subsection; defines the term "low-incidence disability"; and permits the Secretary to give preference to applications that propose to prepare personnel in more than one low-incidence disability, such as deafness or blindness.

Section 673(c) directs the Secretary to support leadership-preparation activities that are consistent with the objectives described in section 673(a), and lists examples of specific activities that may be carried out under this subsection.

Section 673(d) directs the Secretary to support activities, consistent with the objectives described in section 673(a), that are of national significance and have broad applicability, and lists examples of specific activities that may be carried out under this subsection.

Section 673(e) directs the Secretary to support activities, consistent with the objectives described in section 673(a), to benefit children with high-incidence disabilities, and lists examples of specific activities that may be carried out under this subsection.

Section 673(f) requires an eligible entity that wishes to receive an award under section 673 to submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, and describes certain material that must be included, or that the Secretary may require to be included, in applications for funds to carry out certain activities.

Section 673(g) establishes various rules for the selection of recipients under section 673.

Section 673(h) requires applicants for certain projects under section 673 to provide an assurance that they will ensure that individuals who receive scholarship assistance under the proposed project will subsequently work in the area for which they received training or repay all or part of that assistance, in accordance with regulations issued by the Secretary.

Section 673(i) permits the Secretary to include funds for scholarships, with necessary stipends and allowances, in awards under section 633.

Section 673(j) authorizes the appropriation of such sums as may be necessary to carry out section 673 for each of the fiscal years 1998 through 2002.

Section 674(a) directs the Secretary to assess progress in the implementation of the IDEA, including the effectiveness of State and local efforts to provide a free appropriate public education to children with disabilities, and to provide early intervention services to infants and toddlers with disabilities and infants and toddlers at risk for developmental delay. To that end, the Secretary may support studies, evaluations, and assessments, including various studies described in this subsection.

Section 674(b) directs the Secretary to carry out a national assessment of activities carried out with Federal funds under the IDEA in order to: (1) determine the effectiveness of the IDEA in achieving its purposes; (2) provide information to the President, the Congress, the States, LEAs, and the public on how to implement the IDEA more effectively; and (3) provide the President and the Congress with information that will be useful in developing legislation to achieve the purposes of the IDEA more effectively. An interim report is due to Congress by October 1, 1999; and a final report of the findings of the assessment is due by October 1, 2001.

Section 674(c) requires the Secretary to provide an annual report to Congress that includes an analysis and summary of the data reported by the States and the Secretary of the Interior under section 618; the results of activities conducted under section 674(a);and the findings and determinations resulting from reviews of State implementation of the IDEA.

Section 674(d) directs the Secretary to provide technical assistance to LEAs to assist them in carrying out local capacity-building and improvement projects under section 611(e) of Part B.

Section 674(e) allows the Secretary to reserve up to one-half of one percent of the amount appropriated under Parts B and C for each fiscal year to carry out section 674.

Chapter 2

Section 681(a) sets out congressional findings in support of Chapter 2.

Section 681(b) provides that the purposes of Chapter 2 are to ensure that: (1) children with disabilities, and their parents, receive training and information on their rights and protections under the IDEA; (2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist them to improve services and results for children with disabilities and their families; (3) appropriate technology and media are researched, developed, demonstrated, and made available in timely and accessible formats to parents, teachers, and all types of personnel providing services to children with disabilities; (4) on reaching the age of majority under State law, children with disabilities understand their rights and responsibilities under Part B of the IDEA, if the state provides for the transfer of parental rights under Part B; and (5) the general welfare of deaf and hard-of-hearing individuals is promoted.

Section 682(a) authorizes the Secretary to make awards to parent organizations to support parent training and information (PTI) centers.

Section 682(b) requires each PTI center assisted under section 682 to carry out a variety of specified activities.

Section 682(c) identifies additional activities that PTI centers may, but are not required, to carry out.

Section 682(d) requires each application for a PTI center to identify the special efforts that the applicant will undertake to: (1) ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and (2) work with community-based organizations.

Section 682(e)(1) requires the Secretary to make at least one award to a parent organization in each State, unless the Secretary does not receive an application from a parent organization in the State of sufficient quality to warrant approval.

Section 682(e)(2) requires the Secretary to select among applications submitted by parent organizations so as to ensure the most effective assistance to parents, including parents in urban and rural areas, in the State.

Section 682(f) requires the board of directors or special governing committee of each organization that receives an award for a parent training and information center to meet at least once in each calendar quarter to review the activities for which the award was made.

Section 682(g) identifies the characteristics of those private nonprofit organizations that qualify as "parent organization" and that are, therefore, eligible to apply for PTI center awards under section 682. In addition to other requirements, such an organization must either have a board of directors the majority of whom are parents of children with disabilities or have established a special governing committee for the Secretary center that meets that condition.

Section 683(a) authorizes the Secretary to make awards to local parent organizations to support local parent training and information centers that will help ensure that underserved parents of chil-

dren with disabilities have the training and information they need to enable them to participate effectively in helping their children with disabilities: (1) meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and (2) be prepared to lead productive, independent adult lives to the maximum extent possible.

Section 683(b) identifies certain activities that each local PTI center assisted under section 683 must carry out.

Section 683((c) defines the term "local parent organization", as used in section 683.

Section 684(a) would authorize the Secretary to provide technical assistance for developing, assisting, and coordinating parent training and information carried out by PTI centers assisted under section 682 and 683.

Section 684(b) would allow the Secretary to focus technical assistance under section 684 on various areas.

Section 685(a) directs the Secretary to provide technical assistance and information to interested parties in order to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and to address systemic-change goals and priorities.

Section 685(b) directs the Secretary to carry out or support technical assistance activities, consistent with the objectives described in section 685(a), relating to systemic change, and identifies examples of specific activities that are authorized under this subsection.

Section 685(c) directs the Secretary to carry out or support activities, consistent with the objectives described in section 685(a), relating to specific topics or populations, and identifies examples of specific activities that are authorized under this subsection.

Section 685(d) directs the Secretary to carry out or support information dissemination activities that are consistent with the objectives described in section 685(a), including activities that address national needs for the preparation and dissemination of information relating to eliminating barriers to systemic-change and improving early intervention, educational, and transitional results for children with disabilities.

Section 685(e) requires an eligible entity that wishes to receive an award under section 685 to submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

Section 686 authorizes the appropriation of such sums as may be necessary to carry out sections 681 through 685 for each of the fiscal years 1998 through 2002.

Section 687(a) directs the Secretary to make competitive awards to eligible entities to support technology development, demonstration, and utilization activities described in section 687(b) and educational media services activities described in section 687(c).

Section 687(d) requires any eligible entity that wishes to receive an award under section 687 to submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

Section 687(e) authorizes the appropriation of such sums as may be necessary to carry out section 687 for each of the fiscal years 1998 through 2002.

Miscellaneous provisions

Section 201 of the bill extends the effective date of the Jeffords Amendment, section 314(a)(2) of the Improving America's Schools Act of 1994 (Public Law 103–382; 108 Stat. 3936), to July 1, 1998.

Section 202 of the bill specifies effective dates, as follows: Except for sections 605 and 607, which take effect on the date of enactment, parts A, B, and C of the Individuals with Disabilities Education Act, as amended by section 101 of the bill, shall take effect on July 1, 1998; and part D of the Act, as amended by section 101 of the bill, shall take effect on October 1, 1997.

Section 203 of the bill provides that notwithstanding any other provision of law, beginning on October 1, 1997, the Secretary of Education may use funds appropriated under part D of the Individuals with Disabilities Education Act to make continuation awards that were funded under parts C through G of such Act (as in effect on September 30, 1997).

Section 204 of the bill repeals part I of the Individuals with Disabilities Education Act, effective October 1, 1998; repeals part H of such Act, effective July 1, 1998; and repeals parts E, F, and G, effective October 1, 1997.

X. CHANGES IN EXISTING LAW

The Committee has determined that it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of rule XXVI, paragraph 12, of the Standing Rules of the Senate, with respect to this legislation.